Supreme Court, U.S.
FILED

961349 FEB 24 1997

No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

AUGUSTUS J. SIMMONS,

Petitioner,

v.

CONNECTICUT DEPARTMENT OF TRANSPORTATION, J. WILLIAM BURNS, COMMISSIONER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS
Petitioner
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114 pp

QUESTION PRESENTED

The question presented relates to the jurisdiction of this court to reexamine certain rulings of the Connecticut Supreme Court (180 Conn. 587 (1980)), made without NOTICE, SERVICE of PROCESS, JUST COMPENSATION, or JUDGMENT FILE pertaining to the acquisition of "satisfactory property interests" for AIRPORT FEDERAL PROJECTS wherein an agency of the United States of America, (F.A.A.), is involved as a primary and principal party, without having paid any compensation, and, wherein such ruling is relied upon by the district and federal Appeals Court to install DENIAL of access to the federal court house via SANCTIONS, FINES, FRIVOLOUS LAWSUIT CLAIMS denying equal justice in accordance with the Equal Protection Clause, is outstanding, and, in which it is alleged, were in total disregard of that part of the FIFTH and FOURTEENTH AMENDMENTS declaring that no STATE shall deprive any person of his property without due process of law, or deny the equal protection of the laws to any person within its jurisdiction.

The Constitution of Connecticut provides that "all courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay." Art. I, sec. 10.

The Constitution of Connecticut provides that "the property of no person shall be taken for public use, without just compensation therefor." Art. I, sec. 11.

QUESTION PRESENTED – Continued

"Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." *Cafeteria & Restaurant Workers Union v. McElroy,* 367 U.S. 886, 895 (1961); *Goldberg v. Kelly,* 397 U.S. 254, 263 (1970); *Griggs v. Allegheny County,* 369 U.S. 84, 82 S. Ct. 53; *United States v. Causby,* 328 U.S. 256.

PARTIES TO PROCEEDING

Petitioner:

Augustus J. Simmons, Landowner

Respondent:

J. William Burns, Commissioner
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OPINION BELOW

The order of denial of Motion for Leave to file the petition to annul all sanctions associated with docket #96-7336 and all previous listed federal court actions, dated January 3, 1977 is printed at Appendix A.

The Motion for Leave to file a petition to annul all sanctions associated with actions referenced above, dated December 16, 1996 is printed at Appendix B.

Extraordinary petition under rule 60(b) of federal rules to entertain an action to relieve a party from "sanctions" by the Appeals Court of the Second Circuit and the District Court of Connecticut for reasons apparent on the face of the record to wit, dated December 16, 1996 is printed at Appendix C.

Plaintiff's dissolution attachment, exhibit #1, "discharged by operation of law" dated December 1, 1996, court stamped December 2, 1996 by Office of the Clerk, Superior Court, is printed at Appendix D.

The attachment exhibit #2 of vol. 59, p. 657-668 of Town of East Granby, CT land records containing a copy of a citation at vol. 59, p. 661 with the certification seal of town clerk dated November 28, 1995, is printed at Appendix E.

The resubmitted "corrupt practices" letter addressed to George Lang III, Clerk, U.S. Court of Appeals for the Second Circuit addressing sanctions, dated March 5, 1996, is printed at Appendix F.

STATEMENT OF JURISDICTION

This court's jurisdiction is invoked pursuant to the authority granted in 28 U.S.C. § 1331(a) (1964) and, under the Fifth Amendment to the Constitution of the United States, section four, as made applicable to the states through the Fourteenth Amendment, section one.

Jurisdiction of this court is also invoked pursuant to Section 10 of the administrative procedure act, 5 U.S.C. §§ 701 et seq., this being an action brought by person suffering legal wrongs because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V, Constitution of the United States

" . . . nor shall private property be taken for public use, without just compensation."

Amendment XIV, Constitution of the United States

" . . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646 sec. §§ 221(b), 305; as amended P.L. 100-17, Title IV §§ 417, 418, April 2, 1987. Sec. 221(b) reads

Until July 1, 1972 sections 210 and 305 shall be applicable to a state only to the extent that such state is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all states.

Sec. 305(1) reads

(1) In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

President's Memorandum of February 27, 1985, 50 Fed. Reg. 8953 provides:

"The purpose of this memorandum [this note] is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [generally 42 U.S.C.S. §§ 4601 et seq.; for full classification, consult U.S.C.S. tables].

Connecticut General Statute 13b-50, sec. (d) reads in part:

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other navigation facilities is financed wholly or partly with federal moneys, the municipality, or the commissioner as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

Grant Agreement 9-06-009-5708- (January 12, 1955) page 2 of 4 pages reads in part:

The administrator for and on behalf of the United States hereby offers and agrees to pay as the United States share of costs incurred in accomplishing the project, 50 percent of all allowable project costs subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this offer shall be $37,000.00.

2. The sponsor shall

(a) begin accomplishment of the project within a reasonable time after acceptance of this offer, and

(b) carry out and complete the project in accordance with the terms of this offer, and the Federal Airport Act and the regulations promulgated thereunder by the administrator in effect on the date of this offer, which act and regulations are incorporated herein and made a part hereof, and

(c) carry out and complete the project in accordance with the plans and specifications and property map incorporated herein as they may be revised or modified with the approval of the administrator or his duly authorized representative.

Executed this 1st day of February, 1955.

By K.H. Ringrose

Title – Director of Aeronautics (Conn.)

PETITION FOR WRIT OF CERTIORARI

The petitioner, Augustus J. Simmons, respectfully prays a writ of certiorari issue to review the arbitrary exercise (edict) of the parties of private counsel, acting under the canopy of plaintiff's private tort action (*Simmons v. Wetherall* – #163875), in lieu of condemnation under the eminent domain statute, declaring in terms, without more, that the full and exclusive title to a described piece of land belonging to one person should be and is hereby vested in the State of Connecticut, without due notice of the seizure proceedings, without process of service on the owner or interested parties as mandated by statute, without any return of service to the court of competent jurisdiction (Superior Court), without establishing fair market value (appraisals) for just compensation purposes, without any written statements or preparation of a judgment file, mandatory under federal regulations and state statute, C.G.S. 8-129.

Early in our jurisprudence, this court voiced the doctrine that "[W]herever one is assailed in his person or his property, there he may defend," *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876). See *Baldwin v. Hale*, 1 Wall 223 (1864); *Hovey v. Elliott*, 167 U.S. 409 (1897).

REASONS FOR GRANTING THE WRIT

(1) The petitioner, Augustus J. Simmons, respectfully prays a writ of certiorari issue to review the validity of the decree of confiscation (not condemnation) of AIRPORT Federal Project Real Property (grant agreement 9-06-009-5708 (1955)), by private parties, without notice

or service of process upon the owner or parties in interest, actual or constructive; without establishing damages, fair market value, or securing just compensation as provided by law; with a dating back to "1964" to avoid compliance with regulations promulgated under the Uniform Real Property Acquisition Act (P.L. 91-646 (1971)); the concealment of leases (DOT-FA74NE-0369- with supplements) entered into by the Connecticut Department of Transportation with the United States of America, (F.A.A.), of the subject property, without notice or compensation to the owner; and, where the confiscation precept on the land records was issued by discharged private counsel (twice) by transmogrifying plaintiff's private tort action (*Simmons v. Wetherall* – #163875) into a public eminent domain action, superimposing the Connecticut Department of Transportation as plaintiff, it becomes necessary therefore, to consider the question upon principle, the previous decisions of this court, the provisions of the Constitution of the United States and of the acts of Congress by which extra-judicial seizures by private parties are to be given full faith and credit in the courts of the United States by imposing SANCTIONS, FINES, CLOSING the doors of the federal court house to just compensation claims and denial of equal protection of the laws of Congress, enacted to prohibit the question before the court.

(2) The opinions and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court in the resort to COERCIVE ACTION in the form of SANCTIONS that is in conflict with 49 C.F.R. § 24.102(h).

Where it is obvious, apparent, acknowledged on the record in state court proceedings (Dupont, A. 7/7/82) the process was VOID on its face, the extra-judicial seizure rendered was necessarily VOID, and of course there is no foundation for any claim of just compensation where the property in controversy was not legally attached or condemned.

A court cannot acquire jurisdiction by the mere assertion of it. *Gould v. Glass*, 19 Barb., 179; *Harkness v. Hyde*, 98 U.S. 476; in re *Eichoff*, 101 California 600; *Williamson v. Berry*, 8 How. 405; Brown on Jurisdiction, 2d Ed. § 26.

If the court of competent jurisdiction (Superior Court) did not have jurisdiction of plaintiff's in error, neither that court nor the Appeals Court had power to render judgment against them. *Goldey v. Morning News*, 156 U.S. 518; *Harkness v. Hyde*, 98 U.S. 476; *Walling v. Beers*, 120 Mass., 549; *Fisher Sons & Co. v. Crowley*, 57 W. Va. 312.

Where the record before the District Court (Hon. Cabranes, J. 2/8/82) shows an acknowledgment by Asst. U.S. Atty. George J. Kelly Jr. that *NO* federal funds were expended toward the installation of navigational instrumentation on private property, notwithstanding the original grant agreement (9-06-009-5708) required a fifty (50) percent contribution, and, the subject property shows several parties in interest (lien-holders) who must be paid compensation FIRST, prior to, before the owner, as mandated by Conn. General Statute § 48-21, and, these parties in interest have never been made a party to any eminent domain proceeding to satisfy the federal requirement as

defined in 14 C.F.R. § 152.3, the imposing of SANCTIONS, in lieu of mandating just compensation is repugnant to the Constitution.

In addition, this case represents a classic problem of equal protection of the laws. The loss of access to the courts in an eminent domain action involving federal project real property is a right of substantial magnitude when only through the courts may redress or relief be obtained. The repugnancy to the Constitution is illuminated in a concurring decision by Justice Douglas in *Boddie v. Connecticut*, 401 U.S. at p. 383; *Griffin v. Illinois*, 351 U.S. 12 has had a sturdy growth.

"Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." *Roberts v. LaValle*, 389 U.S. 40, 42. See also *Williams v. Oklahoma City*, 395 U.S. 458; *Long v. District Court of Iowa*, 385 U.S. 192; *Draper v. Washington*, 372 U.S. 487.

(3) The opinions and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court where NO NOTICE, written or constructive, NO SERVICE upon any parties or return to the court of competent jurisdiction is on the face of the record. It was not within the power of the jurisdiction of the State Supreme Court of Connecticut or the District Court to proceed with the case so as to affect the rights of the interested parties or the owner, who was not listed for notice or service.

Where it appears on the face of the record that the process was not returned not later than six days before the return day in accordance with mandatory statutory requirements, C.G.S. 52-57; where the Attorney General's office acknowledges there was no service of process upon necessary parties; where the owner, Augustus J. Simmons, was intentionally, maliciously, and in bad faith, *EXCLUDED* from the citation on the public land records of Town of East Granby, CT at vol. 59, p. 661-2 is – constructive fraud.

From *Windsor v. McVeigh*, 93 U.S. 274 that has been cited by this court on numerous occasions the following doctrine prevails:

The jurisdiction acquired by the seizure of property, in a proceeding *in rem* for its condemnation for alleged forfeiture, is not to pass upon the question of forfeiture absolutely, but to pass upon that question after opportunity has been afforded to its owner and parties interested to appear and be heard upon the charges for which the forfeiture is claimed. To that end some notification of the proceedings beyond that arising from the seizure, prescribing the time within which the appearance must be made is essential.

The doctrine, that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the

extent or character of its judgment, the law which is applicable to it.

Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter. A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether.

The seizure in a suit *in rem* only brings the property seized within the custody of the court, and inform the owner of that fact. The theory of the law is, that all property is in the possession of its owner, in person or by agent, and that its seizure will, therefore operate to import notice to him. Where notice is thus given, the owner has the right to appear and be heard respecting the charges for which the forfeiture is claimed. THAT RIGHT MUST BE RECOGNIZED AND ITS EXERCISE ALLOWED BEFORE THE COURT CAN PROCEED BEYOND THE SEIZURE TO JUDGMENT.

The Connecticut statutes make detailed provision for such notice and there is little doubt that, if the statutes are followed, the notice requirements of due process will be met. Strict compliance with the notice provisions of the statutes is required under Connecticut law and not to be – "disregarded with impunity, nor waived or changed by the courts." *Munger v. Doolan*, 75 Conn. 656-659, 55 Atl. 169 (1903), paraphrased with approval in *Carter v. Carter*, 147 Conn. 238, 242, 159 A 2d 173 (1960).

The Supreme Court statement about the older statute is equally true of the 1967 version. "[The statute] requires

that a specific course be pursued if a man's property is to be taken from him without jurisdiction of his person. It recognizes no equivalents and admits no evasions. Nothing less than, or different from, that which the statute prescribes can satisfy its requirements even though substantially the same ends have been accomplished." *Carter v. Carter,* 147 Conn. 238.

It is well established rule of this jurisdiction that a court will not proceed to adjudicate a matter until all persons directly concerned have been given actual or constructive notice of the pendency of the proceedings and a reasonable opportunity to appear and to be heard. This is a jurisdictional limitation which rests upon a sound constitutional basis. *Gill v. Shimelman,* 180 Conn. 568 (1980); state ex rel *Kelman v. Shaffer,* 161 Conn. 522, 527, 290 A 2d 327 (1971); *Ackerman v. Union & New Haven Trust Co.,* 91 Conn. 500, 508, 100 A. 22 (1917).

The due process clause affords protection against "judgments without notice." *International Shoe Co. v. Washington,* 326 U.S. 310-324. However, notice is but one ingredient of a proper assertion of state court jurisdiction. The other is a statute authorizing the exercise of the states judicial power along constitutionally permissible grounds.

Service must be made within any applicable period of limitations, since it is service of process not the attachment, which tolls the statute. *Young v. Margiotta,* 136 Conn. 429, 433, 71 A 2d 924 (1950); *Consolidated Motor Lines Inc. v. M & M Transportation Co.,* 128 Conn. 107, 109, 20 A 2d 621 (1941). Both cases rely on *Sanford v. Dick,* 17 Conn. 213, 215 (1845).

The defect of an improper return day is not a minor defect. It cannot be disputed that an improper return day affects the courts jurisdiction. *Hartford National Bank & T. Co. v. Tucker,* 178 Conn. 472, 478-79, 423 A 2d 141 (1979) cert. denied, 445 U.S. 904, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980).

Where it is patent upon the face of the record, as in the case at bar of – failure to make service at all, as in abortive abode service (*Clover v. Urban,* 108 Conn. 13, 142 Atl. 389 (1928) or service on the wrong person is no service at all and no amendment can cure such a defect. *Hyde v. Richard,* 145 Conn. 24, 138 A 2d 527 (1958).

Where the – insufficiency of service of process – as illuminated in *Clover v. Urban,* supra, and cited frequently by the Connecticut Supreme Court in decisions regarding proper notice for jurisdiction purposes was submitted to the Supreme Court (*Simmons v. Wetherall,* #9200, October-term, 1978) (brief of defendants appellants) wherein the ARGUMENT before the court by Atty. Ronald Cassidento, representing plaintiff, the record shows the argument was made to wit at page 9:

"Compliance with a mandatory provision of a statute is a condition precedent to the privilege conferred. *Hocking v. Title Insurance & Trust Co.,* 37 Cal. 2d 644. A mandatory provision in a statute has been defined as one, the omission of which renders the proceeding to which it relates null and void. *CLOVER v. URBAN,* 108 Conn. 13, 14, 142, A. 389. *Strong v. Strong,* 8 Conn. 408."

The argument was made to wit at pages 10 & 11:

"In the case at bar the facts are virtually identical to those in *Simmons*. The state has sought to take the appellant's property for expansion of an airport but has not complied with the statutory requirements necessary to validly accomplish its goal. Without adhering to the statutory mandate of section 13B-44 (formerly section 15-79), the state is without power to take the appellant's property for the purpose desired. It should also be noted that the failure of the state to follow the established statutory scheme renders a court powerless to approve the taking, despite the initial agreement of the parties. The trial court erred in granting the state a judgment, because the statute had not been followed. In other words, in the absence of a showing that section 13B-44 had been complied with, the trial court was without jurisdiction and any judgment entered by a court not having jurisdiction is ipso facto, void." *Strong v. Strong*, 8 Conn. 409, 412; *Martin v. Hunter's Lessee*, 1 Wheat 364; *CLOVER v. URBAN*, 108 Conn. 13, 17, 142 A 389; *Perry v. Hyde*, 10 Conn. 329, 337; *Simmons v. State*, 160 Conn. 500, 502, 280 A 2d 355, 356.

Lack of jurisdiction may be noticed at any time, whether or not it is raised by the parties. *Simmons v. State*, supra; *Tellier v. Zarnowski*, 157 Conn. 370, 373, 254 A 2d 568. It cannot be waived by silence of the parties. *Gannon v. Sanders*, 157 Conn. 1, 6, 244 A 2d 397. Furthermore, a court may and should of its own motion dismiss proceedings where want of jurisdiction appears. *People v. Wilson*, 111 Ill. 101, 248, N.E. 826, 827."

The argument was made to wit at page 12:

"Where the land of an individual is taken *in invitum* for public use under the provisions of positive law, every requisite of the statute must be complied with and this must appear on the face of the proceedings for taking the land. *Town of Danbury v. Danbury Airport Corp.*, 9 Conn. supp 319 (1941); *Crawford v. Bridgeport*, 92 Conn. 433 (1918); *Nichols v. Bridgeport*, 23 Conn. 208; *Edwards v. Stonington Cemetery Assoc.*, 20 Conn. 466; *New Milford Water Co. v. Watson*, 75 Conn. 237."

CONCLUSION

For all the reasons submitted, a writ of certiorari should issue to review the denial of access to the courthouse, the prolonged harassment in lieu of damages and just compensation, and, the total and complete disrespect and disregard for congressionally mandated and applicable federal law.

Respectfully submitted,

AUGUSTUS J. SIMMONS,
Petitioner
P.O. Box #1
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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Court House
40 Foley Square
New York 10007

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City and County of New York, on the 3rd day of January, one thousand nine hundred and ninety-seven.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-v-

DEPARTMENT OF TRANSPORTATION and J. WILLIAM BURNS, COMMISSIONER,

Defendants-Appellees.

Docket No. 96-7336

(Filed April 9, 1996)

Appellant pro se, *Augustus J. Simmons*, having filed a Motion for Leave to file Petition,

Upon consideration thereof, it is

ORDERED that the motion be and hereby is *DENIED*.

FOR THE COURT
George Lange III, Clerk
By: /s/ Arthur M. Heller
Arthur M. Heller
Administrative Attorney

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Chief Clerk
Court of Appeals
Second Circuit
New York, NY

December 6, 1996
Re: 96-7336; 94-6156; 92-6208;
88-6093; 85-6087; 83-6257;
83-6043; in addition to 472 F 2d 509

MOTION FOR LEAVE TO FILE A PETITION TO ANNUL ALL SANCTIONS ASSOCIATED WITH ACTIONS REFERENCED ABOVE.

SAID PETITION INVOLVES OVER THREE (3) DECADES OF EMINENT DOMAIN MALFEASANCE.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons,
Plaintiff
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff, Augustus J. Simmons, hereby certifies that a copy of this motion for leave to file a petition to annul all sanctions, a copy of the petition, with exhibits, has been mailed, postage prepaid, first class, this 16 day of December, 1996 to all parties listed.

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
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Burlington, MA 01803

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Chief Clerk
Superior Court (to be put in *Simmons v*
95 Washington St. *Wetherall*, #163875 file)
Hartford, CT 06106

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/s/ Augustus J. Simmons
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APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Chief Clerk
Court of Appeals
Second Circuit
New York, NY

December 16, 1996
Re: 96-7336; 94-6156; 92-6208; 88-6093; 85-6087; 83-6257; 83-6043; in addition to 472 F 2d 509.

EXTRAORDINARY PETITION UNDER RULE 60(b) OF FEDERAL RULES TO ENTERTAIN AN ACTION TO RELIEVE A PARTY FROM *"SANCTIONS"* BY THE APPEALS COURT OF THE SECOND CIRCUIT AND THE DISTRICT COURT OF CONNECTICUT FOR REASONS APPARENT ON THE FACE OF THE RECORD TO WIT:

1. *FRAUD, MISREPRESENTATION,* and *MISCONDUCT*
2. *NO NOTICE, NO SERVICE of PROCESS* and *NO RETURN of SERVICE*
3. *ERRORS OF LAW* apparent on the face of the record
4. *NO WRITTEN STATEMENT of COMPENSATION SUBMITTED or AWARDED*
5. *NO JUDGMENT FILE*
6. *NO APPRAISALS*
7. *NO OPPORTUNITY to be HEARD BY COURT of COMPETENT JURISDICTION*
8. *NAVIGATIONAL SERVITUDE BY F.A.A. – WITHOUT COMPENSATION*
9. *FORCIBLE ENTRY BY ARMY CORPS OF ENGINEERS* – WITHOUT COMPENSATION
10. *SIMMONS v WETHERALL #163875*

11. *FEDERAL RIGHTS*
12. *COERCIVE ACTION*
13. *STATE ACTING AS AGENT FOR FEDERAL AGENCY*
14. *ATTACHMENTS – "DISCHARGED BY OPERATION OF LAW"*

FRAUD

Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct are express grounds for relief under amended subdivision 60 (b)(3) of federal rules and the record discloses the issue was put before this court on several occasions.

In Civil H 81-778 (trans. p. 32) a submission was made to Hon. Jose Cabranes that reads: Mr. Feingold, A.A.G.: And that brings me then to the part of the most recent AFFIDAVIT that was filed this morning with all counsel, hand-delivered to the Atty. General's office by Mr. Simmons in support of his claim here.

The Court: You are referring to the document entitled, "AFFIDAVIT, CONFLICT of INTEREST, CONSPIRACY, FRAUD," filed February 4, 1982 at 9:35 a.m. Mr. Feingold: Right. Yes.

The allegations made in this affidavit are very, very serious. They are attacking the practice of law by certain members of the profession who are licensed to practice in the state courts and in the United States federal courts.

It is true that if fraud entered into the consent Mr. Simmons, on the face of the stipulation, gave, it could vitiate that agreement. It could vitiate the judgment.

And I neglected to cite to Your Honor, and I apologize for the omission, but I would now cite the Connecticut case – and for Mr. Simmons' benefit, with Your Honor's permission, may I hand him a copy of the Connecticut decision that I am now going to cite.

The Court: Please, go ahead.

Mr. Feingold: Mr. Simmons. I omit a copy for the U.S. Atty., Mr. Kelly, because I think he could find it.

We are citing the case of *Kenworthy v. Kenworthy* in 180 Conn. 129, released by the Supreme Court in March of 1980. It is a per curiam opinion. The pertinent parts of this opinion are found on page 131 and with the court's permission, it's quite short, I'll leave out citations, but it's important that I read the statements.

"It is a well-established general rule that even a judgment rendered by the court upon the consent of the parties, which is in the nature of a contract to which the court has given its approval, can subsequently be opened without the assent of the parties if it is shown that the stipulation and hence the judgment was obtained by fraud, in the actual absence of consent or by mutual mistake."

"The power of the court to vacate a judgment for fraud is regarded as inherent and independent of the statutory provisions authorizing the opening of judgments; hence judgments obtained by fraud may be attacked at any time."

THANK YOU, YOUR HONOR.

The Court: Thank you.

The misrepresentations to the Appeals Court, and the court below by the Atty. General's office that there were "SUPERIOR COURT" judgments is MISCONDUCT to mislead, deceive, distort the actual facts.

The extra-judicial judgment of private counsel "Rogin-Hirtle," pretending they are "the court," acting as "the court," identifying themselves as "the court," usurping the power of "the court," creating an atmosphere of the court by recruiting a "court reporter" in their private offices on April 19, 1978 – never had standing, authority, right, jurisdiction, power to act as an eminent domain agency to seize federal project real property (per 42 USC § 4601, 4655).

The record is ultra clear that the Rogin-Hirtle firm having filed an appearance on December 13, 1977 under "murky" circumstances, including an absurd offer that was countered with a *"DISMISSAL"* notice in writing on December 23, 1977 with one of the reasons stated in the dismissal was failure to procure a market research study (appraisals).

The record is ultra clear that plaintiff replaced the "Rogin" firm with Atty. Robert King of Vernon, CT on January 4, 1978 and Atty. King was *"DENIED"* the right to represent plaintiff.

The record is ultra clear a *SECOND* notice to "take a hike," *DISMISSAL* was submitted to the Rogin law firm on April 12, 1978 – with copies to referee Shapiro and A.A.G. Fred Neusner.

The record is ultra clear that the "ATTORNEY'S" submitted a WITHDRAWAL from Simmons matters on

April 19, 1978 – for failure to procure (force) deeds to the property, being told in English "there will be no God-damn closing with a dating back to 1964."

The record is ultra clear that the "ATTORNEY'S" sent the sheriff after plaintiff with a P.J.R. (pre-judgment remedy) ex parte for counsel fees on April 20, 1978 – and – recorded same on the public land records of East Granby, CT at Vol. 59, p. 419. (Written agreement of representation was on a contingency basis for damages.)

The record is ultra clear that the "ATTORNEY'S" are encumbering the real property on June 2nd and 5th of 1978 with self-proclaimed judgments without any appraisals, notice or service on necesssary [sic] parties, no return to the court of competent jurisdiction (Superior Court).

The record is ultra clear there not being any eminent domain proceedings in existence – or – initiated for P.J.R. purposes, the filing on the land records was made under plaintiff's private tort action *AGAINST* the state (*Simmons v. Wetherall* – #163875), superimposing the Connecticut Department of Transportation as plaintiff (Vol. 59, p. 662) that is outright fraudulent.

The record is ultra clear the judgment encumberance never reached or seen the inside of the Superior Court courthouse – yet – there is the highly EMBARRASSING decision of *Simmons v. Wetherall* #163875 by the Connecticut Supreme Court of 180 Conn. 587 (1980).

The record is ultra clear that the Atty. General's office (Feingold, V.) charged the Superior Court Judge (Dupont, A.) on *JUNE 7, 1982* with lack of jurisdiction to proceed,

consequently compensation from the "slush fund" submitted to the court without any writs, complaints, purported judgments, was *DENIED* to lien-holders Valente and Allaire with liens exclusively on parcel "C," location of federal navigational instrumentation.

It did not become known to plaintiff until several years passed that the United States of America (F.A.A.) and the state of Connecticut (Department of Transportation) entered into a lease of plaintiff's private property (DOT – FA74NE – 0369), signed on various dates in the month of June, 1974, *NEVER* notifying plaintiff, *NEVER* compensating plaintiff, *NEVER* recording anything on the land records BECAUSE – plaintiff is paying taxes on the parcel to the town of East Granby, CT, subsidizing the federal agency (F.A.A.) to continue the navigational servitude against plaintiff and as the demand for compensation (rental) became more forceful, the cop-out was *"WE HAVE A LEASE FROM THE STATE,"* your problem is with the state. The fact that there was an ulterior motive by the federal agency and the lease is (was) as phony as a three dollar bill can be garnished from the first page – the lease is for the period of time from June 1, 1974 to June 30, 1974 – for permanent structures on the surface of the real property.

With the obvious misrepresentations by state defendants, and, representations made to Hon. Jose Cabranes by Asst. United States Atty. George Kelley that the F.A.A. did not pay "one plug nickel" toward the acquisition of the property – or – for the exclusive servitude of controlling all air-traffic with the instrumentation on private property (Trans. H81-778-2/4/82, pg. 25, 26), an ORDER

was issued by His Honor Jose Cabranes on August 16, 1983.

ORDER

Based upon the full record of this case, including the defendants memorandum in support of its [sic] motion to dismiss the complaints (filed June 28, 1983) the exhibits appended thereto, and the argument of counsel in open court on August 15, 1983, the court concludes that these cases effectively constitute appeals from state court judgments and litigation of them before this forum is barred by the doctring of *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), that collateral attack in this court on the judgments of the Connecticut Superior Court is barred by 28 U.S.C. § 1738, and that, in any event, the prior adjudication of these claims in *Simmons v. Wetherall*, 180 Conn. 587 (1980) bars their reassertion, because of the doctrine of res judicata. For all of the foregoing reasons, the state defendant's motion to dismiss the complaints in Nos. H 81-778 and H83-225 is granted. It is so ordered.

Jose A. Cabranes, U.S.D.J.
August 16, 1983 Hartford, CT

2. INSUFFICIENCY OF PROCESS

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified" *Baldwin v. Hale*, 1 Wall. 223, 233. See *Windsor v. McVeigh*, 93 U.S. 274; *Harvey v. Elliot*, 167 U.S. 409; *Grannis v. Ordean*, 234 U.S. 385.

The fact that there is *NO RECORD* of any proceeding filed with the Chief Clerk of the Superior Court, the fact that several liens are outstanding against the property, the fact that compensation was denied from the "slush fund" to lien-holders Valente-Allaire due to no service or process as mandated by C.G.S. 52-57, the acknowledging, conceding the fact of no notice, no service of process was made on any parties, by state defendants before Hon. Dupont, A. in state court on June 7, 1982, YET, submit incomplete exhibits to mislead the federal courts is – fraud upon the federal court.

3. ERRORS OF LAW

A threshold question in this case is the choice of law (state or federal) by which the void decree should be judged for JURISDICTION purposes, for COMPLIANCE purposes, and for COMPENSATION purposes.

It is undisputed in the case at bar that the acquisition of "satisfactory property interests" as defined in (14 C.F.R. 152-3) with title free and clear of any reversionary interest, lien, easement, lease or other encumberance is/ was a necessary incident to the construction of navigational instrumentation by the federal agency, F.A.A., pursuant to a "1955 agreement," wholly or in part on plaintiff's property that invokes the plain language of 42 U.S.C. § 4655 that mandates the states comply with the land acquisition procedures specified in 42 U.S.C. § 4651, regardless of whether persons are displaced as a result of the land acquisition.

Section § 4651 provides that: "In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many federal programs, and to promote public confidence in federal land acquisition practices," the agency seeking to acquire real property shall: (1) make every reasonable effort to acquire property by negotiation, (2) appraise the property before the initiation of negotiations, with the owner present, if he wishes, at that appraisal, and, (3) make an initial offer to the landowner to acquire the property interest for the full appraisal amount.

The precise language of § 4655 indicates that a state must be guided, "to the greatest extent practicable under state law" by the § 4651 procedures. By "practicable" Congress intended to have the grant recipient comply with the § 4651 procedures to the fullest extent to which it is legally capable of complying under state law. See *Beaird-Poulan Inc. v. Louisiana Department of Highways*, 497 F 2d 54, 58 (5th cir) cert. denied, 420 U.S. 990, 95 S. Ct. 1424, 43 L. Ed. 2d 670 (1974); *Whitman v. Missouri State Highway Comm.*, 400 F. Supp. 1050, 1066-68 (W.D. Mo. 1975).

The legislative history of "The Uniform Act" (P.L. 91-646) states that "[I]t is immaterial whether . . . federal funds contribute to the cost of the real property, the controlling point is that the real property must be acquired for a federal or federal financially assisted program or project" H.R. Rep. no. 91-1656, 91 St. Cong. 2nd Sess. 1970 reprinted at 1970 U.S. Code Cong. & Ad.News

5853. See *City of Columbia, S.C. v Costle*, 710 F 2d 1009 (1983).

Where there is a grant agreement between the United States of America (F.A.A) and the State of Connecticut (Department of Transportation) involving the subject property (Grant Agreement 9-06-009-5708) – "The use to be made of the land taken is necessarily a factor to be considered in the application of the rule" under 42 U.S.C. § 4655.

4. STATEMENT OF COMPENSATION

The declared policy of the Uniform Acquisition Act, P.L. 91-646, is to "establish uniform policy for the fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs in order that such persons shall not suffer disproportionate injuries . . . " 42 U.S.C. § 4621.

From the public policy promulgated, publicized by the Connecticut Department of Transportation the following excerpts relative to statements of compensation are gleaned:

Connecticut, as most other states, uses the one price offer policy. The amount offered cannot be less than the agency determination of Fair Market Value. A statement will be provided to you explaining the basis for the amount offered.

If an agreement as to price cannot be reached, the property will then be acquired under the laws of eminent domain. A condemnation will be filed and the money offered will be deposited with the court. This money is

available to the owner and may be withdrawn without prejudice to that person's case.

Equity mandates a statement of Fair Market Value and its enforcement by the courts under 42 U.S.C. § 4655.

5. NO JUDGMENT FILE

The purpose of a judgment file is to place on record the proceedings of the court and the facts the court's judgment is based. Judgment files *MUST* be prepared when judgment has been entered involving – TITLE TO PROPERTY – and must be signed by the clerk or assistant clerk unless otherwise ordered by the court. Practice book § 338.

NO such file is in existence under Docket #163875 or any other docket number.

6. NO APPRAISALS

The Fifth Amendment does not allow simply an approximate compensation but requires "a full and perfect equivalent for the property taken." *Monangahela Navigation Co. v. United States,* 148 U.S. at 326.

Where the acquisition is/was "for" a federal program or project, establishing FAIR-MARKET VALUE by appraisals is a PREREQUISITE on every state in the union, every municipality, every public agency that has eminent domain powers, every sponsor of an airport, all highway departments, and this mandatory fundamental requirement of "just" compensation in the Federal Laws, 49 C.F.R. 24: 102 (d) is a "basic protection," a "federally protected right," a "federal law" in which it has been the

rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief – in lieu of SANCTIONS. *Bell v. Hood*, 327 U.S. 678, 684, 66 S. Ct. 773, 77, 90 L.Ed. 939 (1946).

7. NO OPPORTUNITY TO BE HEARD

In violation of the Fifth and Fourteenth Amendments of the Constitution, the recording of the extrajudicial judgment on the land records of the town of East Granby, CT is unconstitutional as it does not (did not) provide the property owners with a meaningful opportunity to be heard before they lose substantial rights and interests. *Armstrong v Manzo*, 380 US. 551.

The fact of the matter is that the "troica" were going to make "DOUBLY SURE" plaintiff-owner-Simmons would not be heard by maliciously "NOT LISTING" the owner for service of process in the citation at Vol. 59, p. 661 of town of East Granby, CT land records.

8. ENTRY BY F.A.A. – WITHOUT COMPENSATION

Where the court record before Hon. Jose Cabranes was unambiguously clear that the federal agency, F.A.A., has never made or offered any compensation, not even a token offer of *ONE (1)* dollar, and, the United States Supreme Court has repeatedly recognized that when a governmental body takes private property for public use, a constitutional obligation to pay compensation may be implied. *United States v Dickinson* 331 U.S. 745, 748, 67 S. Ct. 1382, 1384, 91 L. Ed. 1789 (1947); *United States v Clarke*,

445 U.S. 253, 255-56, n.2, 100 S. Ct. 1127, 1129, n. 2, 63 L. Ed 2d 373 (1980).

Where an analogy can be made to *Kaiser-Aetna v United States,* 444 U.S. 164, the parallel that the F.A.A. has exclusive jurisdiction to the navigable airspace of the United States, it lacked the authority to open up the airspace, with the instrumentation on the surface of private property, to the public – *WITHOUT COMPENSATION TO THE OWNER.*

The opening up the airspace to the public by invading the surface of the property, installing instrumentation with exclusive jurisdiction to control the air lanes, – THAT COMPLETELY EXCLUDES ANY STATE PARTICIPATION OR RESPONSIBILITY – amounts to a taking by the F.A.A. requiring just compensation – *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393.

It is noted that this Appeals Court was "in error" wherein the reported and remanded opinion (472 F 2d 509 (1973)) the court stated at page 511-#4: – the allegations about the land upon which the runway lights are placed, however, stand on a somewhat different footing. At least at this stage of the proceedings, we must accept Simmons' claim that the state had fenced it off and put runway lights on it. Assuming all that to be true, we are unable to conclude that: "It appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957).

If the land is in fact Simmons' and the state indeed has fenced it off without paying him due compensation or instituting court proceedings, it would seem that a

deprivation of appellant's right to "enjoy" the use of his land is stated. See *Lynch*, Supra 405 U.S. at 544, 92 S. Ct. 1113.

The *MAJOR FEDERAL ACTIONS* by the F.A.A., applicable to the case at bar, are clearly delineated in *City of Atlanta v United States*, 531 F. Supp. 506 (1982) at page 508: The F.A.A. is responsible for maintaining air safety. To discharge this responsibility, it must construct navigational aids for the assistance of aircraft using the proposed runway and it must adopt take off and landing procedures for those aircraft and others "in the navigable airspace relating to the runway." Stipulation of fact at 23.

At page 509, Supra: The F.A.A. actions necessary to make the runway operational fall into two categories: The F. A. A. must "formulate and adopt approach and departure procedures to be used by aircraft operating in the navigable airspace relating to the parallel runway" and must "establish, operate and maintain the various air navigation facilities to be used by aircraft approaching to and from the parallel runway." Stipulation of fact at 23.

At page 510, Supra, [3-5]: The F.A.A. has considerable discretion in deciding where to route the additional air traffic, and perhaps in the type and placement of its *NAVIGATIONAL AIDS* as well (emphasis added).

Plaintiff, *AGAIN*, submits the constitutional obligation by F.A.A. to make compensation that was submitted to this Appeals Court (2nd cir.) in Docket #94-6156 under *SANCTIONS, SANCTIONS, SANCTIONS* at page 9 that reads:

The government, F.A.A., having by its agents, proceeding under the authority of an act of Congress, taken the property of the claimant for public use, are under an obligation, imposed by the Constitution, to make compensation. The law will imply a promise to make the required compensation, where property, to which the government asserts no title, is taken, pursuant to an act of Congress, as private property to be applied for public uses. *Great Falls Manufacturing Co.*, 112 U.S. at 656-57, 5 S. Ct. at 310-11.

9. FORCIBLE ENTRY BY ARMY ENGINEERS

1. The United States Army Corps of Engineers, in concert with the Air National Guard, with force and arms and with a strong hand, unlawfully and forcibly entered upon a certain tract of land lying in said town of East Granby, CT belonging to plaintiff containing 1.441 acres that was carved out of a 6.7 acre parcel a/k/a parcel "A", in an irregular pattern that was fenced in with an 8 foot security fence on or about February 1, 1991, without compensation, and upon learning that legal title had never been acquired by the Connecticut Department of Transportation, *ABANDONED* the undertaking, failing to clear trees and structures on the property, which before had been and then was in the actual possession of the plaintiff.

2. The defendant with force and strong hand as aforesaid, then and there expelled and unlawfully put the plaintiff out of possession the same.

3. The defendant unlawfully, and with strong hand, still keeps the plaintiff out of possession of same.

4. The plaintiff prays that process may be issued against the defendant, in the manner prescribed by the statute in such case provided.

10. SIMMONS V WETHERALL #163875

This 2nd Circuit Court of Appeals, having referenced this tort action in the reported decision at 472 F 2d at page 511 had to be aware of the nature and type of action that read: Shortly before the Connecticut Supreme Court decision in *Simmons v Parizek,* Supra, a special act was passed by the Connecticut General Assembly, allowing Augustus Simmons to sue the state for damages over "loss of use of land," arising out of the bumbling condemnation proceedings. On January 5, 1970, Simmons brought such a suit, Docket no. 163875, Hartford Superior Court; the action is still pending. On the threshold of 1997 it is still pending – never having been addressed.

The attempt to transform, transmogrify the tort action into an eminent domain action was devious, without question, certainly not the intent upon which the Connecticut legislature of 1969 passed Special Act #170. The obvious intent was an action AGAINST the state, not for the BENEFIT of the state.

Simmons v Wetherall – #163875 *CANNOT* be substituted for the applicable statute for eminent domain purposes. Quoting from *Waterbury Lumber v Hinckley,* 75 Conn. at page 191: "In our state the right to file a valid judgment-lien is wholly a creature of the statute. The conditions precedent to the validity of such a lien are all prescribed by statute." *Hobbs v Simmonds,* 61 Conn. 235, 238.

From *Waterbury Lumber v Hinckley*, Supra, at p. 191: Where it is patent upon the face of the record, as we think in this case that the judgment rendered was clearly contrary to law, such general assignment of error may be considered sufficient. *Stevens v Kelley*, 66 Conn. 570, 574.

11. FEDERAL RIGHTS

Where the acquisition was "for" or intended to further a federal program or project (major federal action) by F.A.A., where the action "arises under" a "federal law" (49 C.F.R. part 24) and where these rights have been invaded, denied, withheld, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. *Bell v Hood*, 327 U.S. 678, 684, 66 S. Ct. 773, 777, 90 L. Ed. 939 (1946).

Connecticut appellate courts have ruled that land acquisition for approach areas to airports must be made in accordance with "FEDERAL REGULATIONS" – not state law. *New Haven v East Haven*, 35 Conn. Supp. at p. 170. See also Connecticut General Statute 13 (b)-50, section (d).

The United States Supreme Court has ruled that the Relocation Act was intended to extend benefits uniformly to persons displaced "as a result of" federal or federally-assisted programs. *Abdo Ahmad Nagi v United States of America*, 751 F 2d 826 (1985).

12. COERCIVE ACTION

49 C.F.R. 24. 102(h) reads: "The agency shall not advance the time of condemnation, or defer negotiations

or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property."

A reasonable interpretation of what Congress meant or intended with this clause could necessarily apply to the COURTS refraining from SANCTIONS that deny just compensation.

13. STATE ACTING AS AGENT

P.L 91-646, 91st Congress, January 2, 1971, sec. 207 reads:

Whenever real property is acquired by a state agency and furnished as a required contribution incident to a federal program or project, the federal agency having authority over the program or project may not accept such property unless such state agency has made all payments and provided all assistance and assurances, as are required of a state agency by sections 210 and 305 of this act. Such state agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occuring prior to July 1, 1972, such federal agency shall pay 100 per centum of the first $25,000. – of the cost or providing such payments and asistance.

Sec. 208 reads:

Whenever real property is acquired by a state agency at the request of a federal agency for a federal program or project, such acquisition shall, for the purposes of this

act, be deemed an acquisition by the federal agency having authority over such program or project.

Without question, the major federal action, as referenced in #8 (entry by F.A.A.) have EXCLUSIVE AUTHORITY and JURISDICTION over the program or project. The STATE has the dubious distinction of – mowing the grass.

14. DISCHARGED BY OPERATION OF LAW

Plaintiff, Augustus J. Simmons, an "interested person" even though not listed for service in the citation on the land records at Vol. 59, p. 661-2 of town of East Granby, CT submits copies of liens to be "DISCHARGED BY OPERATION OF LAW" that have never been prosecuted to effect according to law. PL. ex. #1

Plaintiff submits copies of Vol. 59, p. 657-668 that contains a copy of the citation at Vol. 59, p. 661 that was never served on any parties and the TRANSMOGRIFICATION from defendant to plaintiff of the Connecticut Department of Transportation at Vol. 59, p. 662 that makes a mockery of the eminent domain process, the scheme is so gross as to be impossible in the rational administration of justice. PL. ex. #2

Plaintiff resubmits copies of "corrupt practices" letter of 3/25/96.

THEREFORE, the plaintiff prays this court:

1. ANNUL ALL SANCTIONS at the appeals and district court level.

2. Plaintiff seeks an "order" from the Appeals Court in the nature of a mandamus upon the federal agency, F.A.A. acquire a leasehold interest from the owner for parcel "C" in the same manner and basis as executed at the other state airport (Groton-New London), and several other airports throughout the Northeast region.

3. Plaintiff seeks an "order" from the Appeals Court in the nature of a mandamus on the District Court to "OPEN" the court house to plaintiff for constitutional claims of *COMPENSATION* against every agency (state and federal) directly involved with malfeasance.

4. Plaintiff seeks an "order" from the Appeals Court against the state agency, Connecticut Department of Transportation, comply with *ASSURANCES*, purportedly submitted and mandated by federal law.

5. Order a time certain for compliance with court orders – toward finality.

6. Grant plaintiff the costs incurred by him to counter the illegal harassment by state and federal agencies.

7. Enter any other order which this court deems just and equitable.

Respectfully submitted,

/s/ Augustus J. Simmons

Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff, Augustus J. Simmons, hereby certifies that a copy of this petition, and exhibits, has been mailed, postage prepaid, first class, this 16 day of December, 1996 upon the following listed parties:

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Chief Clerk
Superior Court (to be put in *Simmons v*
95 Washington St. *Wetherall*, #16375 file)
Hartford, CT 06106

Arnold K. Shimelman, A.A.G.
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131

Robert Hirtle, Jr., Esq.
Rogin, Nassau, Caplan, Lassman and Hirtle
Cityplace
Hartford, CT 06106

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX D

December 1, 1996

Town Clerk
Town Hall
9 Center Street
East Granby, CT 06026

Dear Clerk,

The subject matter of this letter pertains to: DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327.

1. Plaintiff-owner-interested person Augustus J. Simmons requests the following listed encumbrances be endorsed on the record of such attachment with the words "DISCHARGED BY OPERATION OF LAW" pursuant to Connecticut General Statute § 52-327.

2. The attachments on the public land records under the caption of *Augustus J. Simmons v Horace B. Wetherall,* CV-70-163875 by private counsel, without any eminent domain proceedings in existence-or-initiated for attachment purposes, without any notice or service of process on interested parties, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the attachment, and, without appraisals to establish fair-market value that are mandatory, including a transfer of title under plaintiff's private tort action, Docket #163875 are:

Vol. 59, p. 657-668
Vol. 59, p. 654-656
Vol. 59, p. 623-626
Map Book 17, page 853
Map Book 17, page 854

3. Included in Vol. 59, p. 657-668 is a citation at page 661-662 of names of parties and institutions to be served with notice with a return day of the first Tuesday of July, 1978.

4. Vol. 59, p. 661-662 *DOES NOT* list Augustus J. Simmons for notice and service, however, he is still an "interested person," – he just happens to be the owner.

5. That there was *NO* officer's service on any parties, *NO* written return of his (officer's) precept to the court of competent jurisdiction (Superior Court) and *NO* compensation paid is evident in a letter from Atty. Tom Byrne, a copy being submitted as an exhibit showing an encumbrance at Vol. 55, page 731 (1974) of East Granby land records (also listed in the citation at Vol. 59, p. 661-2) that is still outstanding.

The listed attachments in item #2 were recorded on June 2nd and 5th of 1978 which is a much longer period than *FIFTEEN YEARS* from date of attachment.

6. The interested person (owner) submits a sworn testimonial from Atty. Walter Bass before Hon. Dupont, A. on June 7, 1982 representing "Valente's" and "Allaire's" with outstanding liens at Vol. 58, p. 95; Vol. 58, p. 221; 59/253; 59/263; 59/266 (trans. p. 26) that states:

"Your Honor, in Mr. Feingold's recitation that he gave Your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never

been served any citation nor has my clients ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

The above citations of Valente and Allaire are (also listed in the citation at Vol. 59, p. 661-2).

7. The caption *Simmons v Wetherall,* #163875, a tort action *AGAINST* the state, a result of Special Act #170 of the 1969 legislature, *CANNOT* be TRANSMOGRIFIED into an eminent domain action by superimposing the Connection Department of Transportation as plaintiff (Vol. 59, p. 662), by private counsel, for land acquisition for federal navigational instrumentation projects, per federal grant agreement 9-06-009-5708 (1955), that must be acquired pursuant to federal regulations, constituting a fraudulent encumbrance.

8. Under the law of Connecticut, any lien created by attachment continues for 60 days after judgment and no longer. If no execution is taken out before that time, the lien perishes. *Sanford v Pond,* (1871) 37 Conn. 588.

9. Where it is unambiguously clear there was no notice, no service, or, return to the court of competent jurisdiction, no judgment file or record of any kind before the court of competent jurisdiction under Docket #163875, and, the listed return day was the first Tuesday of *July, 1978* (Vol. 59, p. 661) and the attachments were submitted on June 2nd and 5th of 1978, some of which contained a court stamp of the Court Clerk (Thomas H. Abraham) of Superior Court to give the appearance of authenticity to the public is FRAUD upon the court, the

public, and the "interested persons" named in the citation.

Court records show the succeeding Chief Clerk, (Lucian Jachomovitz) informing Hon. Judge John Daly in *August, 1979* there were *NO* proceedings before the Superior Court, consequently the Superior Court was without jurisdiction to act, referencing the citation of *Shelton v Wolthausen*, 80 c 599.

10. Court records show a motion filed with Judge Aronson by plaintiff-owner-interested person (Simmons) that jurisdiction could not be created "sua sponte" in December, 1991 relative to the notice from the court to Atty. Tom Byrne, and others, and as a result of said motion the "slush fund" monies being held under the direction of the court were ABANDONED.

11. Unquestionably, there is years, not months or days beyond the statutory fifteen (15) years referenced and "DISCHARGED BY OPERATION OF LAW" is the purpose and request of this letter.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

§ 52-327. Duration and release of attachment liens on real estate

No attachment of real estate shall continue in force as a lien for a longer period than fifteen years after the date thereof unless within said period the action in which such attachment was made has been prosecuted to effect and a judgment lien filed according to law. All attachments of real estate which have expired as a lien by the provisions of this section shall be deemed dissolved and the real estate shall be free from any lien or encumbrance by reason of the same and the town clerk of the town in which such real estate is situated shall, upon the request of any person interested, endorse on the record of such attachment the words "discharged by operation of law." (1949 Rev., § 8026.)

CERTIFICATION

Plaintiff-owner-interested person hereby certifies that a copy of this Request of Dissolution Pursuant to C.G.S. § 52-327 will be – hand delivered to:

Chief Clerk
Superior Court (to be put in *Simmons v*
95 Washington St. *Wetherall*, #163875 file)
Hartford, CT 06106

Will be mailed, postage prepaid, first class to:

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Atty. Tom Byrne
2-E Farmington Commons
790 Farmington Ave.
Farmington, CT 06032

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

December 1, 1996

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

Dear Michael,

The attached "Dissolution of Attachments Pursuant to C.G.S. § 52-327" filed under the caption of *Simmons v*

Wetherall, #163875 is being submitted to be made part of the #163875 "damages" file.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

LAW OFFICES
BYRNE & BYRNE
2-E FARMINGTON COMMONS
790 FARMINGTON AVENUE
FARMINGTON, CONNECTICUT 06032

THOMAS P. BYRNE
STEVEN E. BYRNE

TELEPHONE
(203) 677-7355

25 November 1996

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Ozzie,

The only activity of which I am aware with respect to a mortgage dated July 3, 1974 as recorded in Volume 55 Page 731 of the East Granby Land Records is notice of a hearing to be held before Arnold Aronson, Judge of the Superior Court, on December 23, 1991 to determine the disposition of funds.

Enclosed herewith is a copy of the notice which I received from the court as well as a copy of a letter to me dated December 19, 1991 from Attorney Walter E. Bass, Jr. I did not attend the hearing of December 23, 1991.

No payments have been received by me on this mortgage.

Very truly yours,

/s/ Thomas P. Byrne
Thomas P. Byrne

AUGUSTUS J SIMMONS VS.
WETHERALL, DEP COMR CV-70-0163875-S

ALL COUNSEL AND PRO SE PARTIES ARE ORDERED TO APPEAR BEFORE THE HONORABLE ARNOLD ARONSON ON MONDAY, DECEMBER 23, 1991 AT 9 30 A.M. IN ROOM 111 AT HARTFORD SUPERIOR COURT, 95 WASHINGTON ST., HARTFORD, CT. A MOTION BY THE COURT TO DETERMINE THE DISPOSITION OF FUNDS WILL BE HEARD.

A COPY OF SAID MOTION WILL BE SENT TO ALL COUNSEL AND PRO SE PARTIES UNDER SEPARATE COVER.

KAREN PICKER
ASSISTANT CLERK

SUPERIOR COURT
95 WASHINGTON STREET
P.O. DRAWER D, STATION A
HARTFORD, CONNECTICUT
06106

WALTER E BASS JR
P. O. BOX 289
EAST WINDSOR CT 06088

DATED DEC 05, 1991
ILLEGIBLE

Law Office of
Walter E. Bass, Jr.
P.O. Box 289
Warehouse Point, Conn. 06088
Tel. 623-8688 Juris Number 02450

December 19, 1991

Attorney Thomas Byrnes
790 Farmington Avenue
Farmington, CT 06032

RE: Augustus J. Simmons
vs.
Horace Wetherell, et al

Dear Attorney Byrnes:

Please be informed that my office represents several creditors of Mr. Augustus J. Simmons. Please be informed that Judge Arnold Arsonson is holding a hearing on December 23, 1991 at 9:30 a.m. in Courtroom 111 at Hartford Superior Court. Enclosed please find a copy of a Notice

which my office has received concerning this hearing. I would like to inform you, that I do believe that you have an interest in this case. I request that you be present at this hearing.

If you have any questions, please feel free to contact my office.

Respectfully,

/s/ Walter E. Bass, Jr.
Walter E. Bass, Jr.

WEBJr./mf

APPENDIX E

No. CV-70-163875	:	SUPERIOR COURT
AUGUSTUS J. SIMMONS	:	JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN AT HARTFORD
VS.	:	
HORACE B. WETHERALL, ET AT [sic].	:	
	:	OCTOBER 28, 1996

MOTION TO DISMISS, DISSOLVE, SET ASIDE REAL PROPERTY ATTACHMENTS UNDER DOCKET #163875

1. Plaintiff, Augustus J. Simmons, moves to dissolve, vacate, set aside real property attachments on the Town of East Granby land records under the caption of *Simmons v Wetherall*, #163875, without subject matter jurisdiction, without jurisdiction of the parties, without any eminent domain proceedings in existence-or-initiated for garnishment purposes, without any notice or service of process, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the garnishment, and without appraisals to establish fair-market value that are mandatory.

2. The attachments on the public land records without any notice, service, appraisals, including a transfer of title under plaintiff's private tort action, Docket #163875, dating back to 1964 that is fraudulent and unconstitutional are – Vol. 59, p. 657-668, Vol. 59, p. 654-656, and Vol. 59, p. 623-626 in addition to Map Book 17, pages 853 and 854.

3. The real property encumbered in Pr. #2 is not the subject matter of Docket #163875.

NEVER at no time did plaintiff give, grant, warrant, authorize the Connecticut Department of Transportation, or its sub-agents (Rogin-Hirtle-Shapiro), or any other parties, authority to transmogrify the private tort action into a public eminent domain action, superimposing the state agency as plaintiff and relegating the owner to a defendant status in the suit against the state.

Special Act #170 of the 1969 legislature reads: AN ACT AUTHORIZING AUGUSTUS J. SIMMONS TO SUE THE STATE. The writ and complaint for the above action was docketed on January 5, 1970 as *Simmons v Wetherall*, #163875.

As stated in *Lafolette v Hinkle*, 131 Wash. 86, 229 P. 317: "Nothing so exclusively belongs to a man or is so personal and valuable to him as his name. His reputation and the character he has built up are inseparably connected with it. Others can have no right to use it without his express consent and he has a right to go into any court at any time to enjoin or prohibit any unauthorized use of it. Nor is it necessary that it be alleged or proved that such unauthorized use will damage him. This the law will presume."

4. From *Sears v Terry*, 26 Conn. p. 286 is the remark of J. Bronson in *Bloom v Burdick*, 1, Hill 130: "In every form in which this question has arisen, it has been held, that a statute authority by which a man may be deprived of his estate, must be strictly pursued." Also – same page, 286: *Thatcher v Powell*, 6 Wheat 119, Marshall Ch. J. said: "It is a self-evident proposition that no individual or public officer can sell and convey a good title to the land of another, unless authorized to do so by express law, and

the person invested with such a power must pursue with precision the course prescribed by law, or his act will be invalid."

In accordance with this doctrine, the case of *Jackson v Esty*, 7 wend 149 was decided. Savage Ch. J. says: "It is a cardinal principle that a man shall not be divested of his property but by his own acts or the operation of the law; and where proceedings are instituted to change the title to real estate by operation of law, the requirement of the law under which the proceedings are had must be strictly pursued. The rule which requires a strict compliance with a statute authority under which a man be be [sic] deprived of his estate, is one of a most salutary tendency."

APPRAISALS

5. The Supreme Court of the United States in its numerous decisions has defined the "just compensation" that the fifth amendment requires to be made when the government exercises its power of eminent domain is *FAIR-MARKET VALUE* to the owner. *United States v Miller*, 317 U.S. 369, 374 (1943).

6. Where owners of property proposed to be taken by county for public park brought an action alleging county had failed to comply with federal statutes requiring that the acquiring agency appoint an APPRAISER who shall provide to owner of land an opportunity to accompany appraiser – Held: county would be enjoined from further prosecution of law suits for condemnation of real property until county had complied with federal statutes requiring the acquiring agency to appoint an

appraiser. *Bethune v United States,* 376 F. Supp. 1074 (1972).

7. The State of Connecticut, Department of Transportation, per federal grant agreement #9-06-009-5708 is mandated under 49 CFR § 24.102 basic acquisition policy, Sec. (b), notice to owner reads: As soon as feasible, the owner shall be notified of the agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part.

8. Federal law and public policy of State of Connecticut mandate appraisals – *BEFORE* – any negotiations, condemnation, confiscation, transfer of title, or otherwise.

NOTICE AND SERVICE OF PROCESS

9. Insufficiency of process and insufficiency of service are now raised by a Motion to Dismiss, Sec. 35, STEPHENSON civil procedure.

10. Service must be made within any applicable period of limitations, since it is service of process not the attachment, which tolls the statute. *Young v Margiotta,* 136 Conn. 429, 433, 71 A 2d 924 (1950); *Consolidated Motor Lines, Inc. v M. & M. Transporation Co.,* 128 Conn. 107, 109, 20 A 2d 621 (1941). Both cases rely on *Sanford v Dick,* 17 Conn. 213, 215 (1845).

So also, even if there has been an attachment, process must be served the requisite number of days before return day. *Brandriff v Sellas,* 40 Conn. Sup. 243.

11. The defect of an improper return day is not a minor defect. It cannot be disputed that an improper return day affects the court's jurisdiction. *Hfd. Nat. Bank & Trust Co. v. Tucker,* 178 Conn. 472, 478-79, 423 A2d 141 (1979) cert. denied, 445 V.S. 904, 100 S.Ct. 1079, 63 L.Ed. 2d 319 (1980).

12. It needs no extended argument to make the point that no judgment purporting to bind the property of a defendant has any validity unless a means reasonably calculated to give notice to the defendant has been employed. *Mullane v Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 94 L.Ed. 865, 870, 70 S.Ct. 652; *Schroeder v New York,* 371 U.S. 208, 9 L.Ed. 2d 255, 83 S.Ct. 279 (1962).

13. The Connecticut statutes make detailed provision for such notice and there is little doubt that, if the statutes are followed, the notice requirements of due process will be met. Strict compliance with the notice provisions of the statutes is required under Connecticut law and not to be – "disregarded with impunity, nor waived or changed by the courts." *Munger v Doolan,* 75 Conn. 656, 659, 55 Atl. 169 (1903), paraphrased with approval in *Carter v Carter,* 147 Conn. 238, 242, 159 A2d 173 (1960).

14. The Supreme Court statement about the older statute is equally true of the 1967 version. "[The statute] requires that a specific course be pursued if a man's property is to be taken from him without jurisdiction of his person. It recognizes no equivalents and admits no evasions. Nothing less than, or different from, that which the statute prescribes can satisfy its requirements even

though substantially the same ends have been accomplished." *Carter v Carter,* 147 Conn. 238.

15. The matter of *NO* notice, *NO* service, *NO* compensation was succintly [sic] made a matter of court record before Judge Dupont, A. on June 7, 1982 by Walter Bass, Esq. representing lien holders Allaire and Valente. (Trans 6/7/82, p. 26) "Your Honor, in Mr. Feingold's recitation that he gave your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served any citation nor has my client ever been served with any kind of citation to give us any notice to come in to determine what our priorities are in this matter.

16. It is a well established rule of this jurisdiction that a court will not proceed to adjudicate a matter until all persons directly concerned have been given actual or constructive notice of the pendency of the proceedings and a reasonable opportunity to appear and to be heard. This is a jurisdictional limitation which rests upon a sound constitutional basis. *Gill v Shimelman,* 180 c. 568 (1980); State Ex Rel *Kelman v Schaffer,* 161 Conn. 522, 527, 290 A2d 327 (1971); *Ackerman v Union & New Haven Trust Co.,* 91 Conn. 500, 508, 100 A 22 (1917).

17. The Due Process Clause affords protection against "JUDGMENTS WITHOUT NOTICE." *International Shoe Co. v Washington,* 326 U.S. 310-324. However, notice is but one ingredient of a proper assertion of state court

jurisdiction. The other is a statute authorizing the exercise of the states judicial power along constitutionally permissible grounds – which henceforth means minimum contacts. *Shaffer v Heitner,* 433 U.S. 186.

18. Where it is patent upon the face of the record, as in the case at bar of – failure to make service at all, as in abortive abode service (*Clover v Urban*), 108 Conn. 13, 142 Atl. 389 (1928) or service on the wrong person is no service at all and no amendment can cure such a defect. *Hyde v Richard,* 145 Conn. 24, 138 A2d 527 (1958).

JURISDICTION

19. Questions of lack of jurisdiction may be raised at any time, even by the court *suo motu.* The parties cannot confer jurisdiction of the subject matter by consent, waiver, silence or agreement. *Simmons v State,* 160 Conn. 492 (1971).

20. That there is no principle better settled than that a judgment or decree cannot be entered in the absence of pleadings upon which to found the same. *Lilly v Claypool,* 59 W.Va. 130, 133, 53 S.E. 22. Under Connecticut citations, any judgment should conform to the pleadings, the issues, and the prayers for relief. *Brill v Ulrey,* 159 Conn. 371, 374, 269 A2d 262; *Verraster v. Tynan,* 152 Conn. 645, 648, 211 A2d 150. That a judgment or decree cannot be rendered if pleading on which to found it are lacking. *Strimska v Yates,* 158 Conn. 179, 185; *Howarth v Northcott,* 152 Conn. 460, 466.

21. That Superior Court Judge Simon S. Cohen cannot confer subject matter jurisdiction upon private counsel (Rogin-Hirtle) on December 13, 1977, date of appearance of Rogin-Hirtle in Docket #163875, to act as a "Ringling Bros. circus czar" by combining "dissimilar" cases, one of which (#162923 – *Simmons v Parizek*) had gone to judgment on January 11, 1977 after 30 trial days over a one year period. The combining, per a reading of the transcript was at the request of Ed Rogin, Sr., Esq. to usurp the powers of the Superior Court and transcend power from *#163875 – Simmons v Wetherall* to every case that had the name "Simmons," whether plaintiff or defendant, whether State Court or Federal Court. Jurisdiction is conferred by statute, not by decisions of the court. *McDowell v United States*, 159 U.S. 596, 598-599, 16 S.Ct. 111, 40 L.Ed. 271; *Leary v United States*, 268 F.2d 623, 626, C.A. 9th; *Blaski v Hoffman*, 260 F2d 317, 320, C.A. 7th affirmed, 363 U.S. 335, 80 S.Ct. 1084, 4 L.Ed.2d 1254. See also *Simmons v State*, 160 Conn. 492.

Neither can the Federal Court confer subject matter jurisdiction on (Rogin-Hirtle). Additionally, Docket #162923, having gone to judgment on January 11, 1977, the practice book requires filing a motion to reopen with the clerk of the court, paying the fee, and hearing held upon whatever grounds are submitted with the motion.

Rogin-Hirtle, Esquires, have not learned how to walk on water – yet.

22. That where the sole issue in #163875 was damages for (2) botched and bungled condemnations, the issue of confiscation (not a condemnation), was not in substance and effect embraced within the issue, and such

a defect must avoid judgment. Connecticut Supreme Court in *New Haven Sandblast v Dreisbach,* 104 Conn. 322, 330, 133 A. 99.

23. The judgment of confiscation was not – *by* – *of* – or *from* the Superior Court or any other court of competent jurisdiction, rendered without jurisdiction of the subject matter or the parties. Such a judgment is void ab initio and is subject to both direct and collateral attack. See *Jensen v Nationwide Mutual Ins. Co.,* 158 Conn. 251, 260, 259 A2d 598 (1969); *Samson v Bergin,* 138 Conn. 306, 312, 84 A2d 273 (1951); Restatement Judgments §§ 7, 11, 117; Restatement (Second) Judgments § 15; 3 Freeman Judgments (5th Ed.) § 1227; 47 Am. Jur. 2d Judgments §§ 752, 753.

"It is an acknowledged principle of . . . every court in the world, that not only the decisions, but everything done under the judicial process of courts, not having jurisdiction, are ipso facto, VOID." *Martin v Hunter's Lessee,* 14 U.S. (1 Wheat) 304, 364, 4 L.Ed. 97 (1816); *Chrysler Credit Corp. v Fairfield Chrysler,* 180 Conn. 223, 229, 429 A2d 487 (1980) (Loiselle, J. concurring); *Marshall v Clark,* 170 Conn. 199, 205, 365 A2d 1202 (1976).

"If a court has never acquired jurisdiction over a defendant or the subject matter . . . any judgment ultimately entered is void and subject to vacation or collateral attack." *Bartels v International Commodities Corp.,* 435 F. Supp. 865, 867 (D. Conn. 1977). It is *acknowledged, conceded, made a matter of record,* by the Attorney General's office that there was no notice, no service, no return of service to the court, and no docket number.

The letter dated June 26, 1978 by Assistant Attorney General William McQueeney to the clerk of the court to be put in file #163875 containing a copy of the citation (Vol. 59, p. 661) of Town of East Granby Public Land Records, that was never served upon anybody is . . . constructive fraud. *Gilbreath v Teufel,* 15 N.D. 152, 197 N.W. 49.

24. Quoting the United States Supreme Court from *Standard Oil v Missouri,* 32 S.Ct. at 409: "It is, of course, essential to the validity of any judgment that the court rendering it should have had jurisdiction, not only of the parties, but of the subject matter. *Chicago B. & O.R. Co. v Chicago,* 166 U.S. 234, 247, 41 L.Ed. 983, 988, 17 Sup. Ct. Rep. 581. From *Pennoyer v Neff,* 95 U.S. 714: There can be no waiver, as will cure that fatal infirmity in the judgment at the time of its rendition, for the character and status of said judgment were fixed at that time. If void then, it could have no existence or force thereafter. The validity of every judgment depends on the jurisdiction of the court before it is rendered; not upon what may occur subsequently.

25. Where the judgment of confiscation was not a result of any contested action before a court of competent jurisdiction, and, the Superior Court has been challenged as not having subject matter jurisdiction – "[T]he public interest in observance of the particular jurisdictional rule is sufficiently strong to permit [relitigation] . . . only if the tribunal's excess of authority was plain or has seriously disturbed the distribution of governmental powers or has infringed a fundamental constitutional protection." Restatement (Second) Judgments § 15 comment d, p. 158. The Connecticut Supreme Court decision 180 Conn. 587

infringed on the basic constitutional guarantee of notice, an opportunity to be heard before judgment is rendered, no pleadings before the court, no service that would give the court jurisdiction, failure to pay just compensation, and a 180 degree about face of *Simmons v State*, 160 Conn. 492 at page 500 wherein – "*the prescribed method of taking must be followed.*" Parallel to the prescribed method of taking is the infringement upon the applicable and governing federal legislation (42 U.S.C. § 4655 (1971)) that requires the state agency – "be guided to the greatest extent practicable under state law, by the land acquisition policies in Sec. 301 and the provisions of Sec. 302 (42 U.S.C. §§ 4651-4652), and, property owners will be paid or reimbursed for necessary expenses as specified in Sec. 303 and 304 (42 U.S.C. §§ 4653-4654)."

26. Sworn testimonials, June 7, 1982, before Superior Court Judge Dupont A., regard *jurisdiction of the parties:* Walter Bass, Esq., transcript, page 26 – "First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the court to hear this case. Secondly, your Honor, in Mr. Feingold's recitation that he gave your Honor this morning, I forgot which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served with any kind of a citation nor has my client ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

Sworn testimonial regard *jurisdiction of the subject matter:* Victor Feingold, Esq., Asst. Atty. Gen., transcript June 7, 1982, page 17 – "I now direct your Honor, and invite your Honor's attention to another element of jurisdiction in the entire matter of Simmons against Wetherall. I might say that whenever I call your Honor's attention to the question of jurisdiction, in accordance with the law of the state, if lack of jurisdiction is brought to your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, your Honor cannot proceed on any of the proceedings until you resolve the issue of subject matter jurisdiction. If, per chance, the jurisdiction question is interwoven now with many other prior motions that have not been acted upon, and it has happened, that it arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so long as this court, the question of jurisdiction is called to your Honor's attention."

27. "When . . . the court saw that it had no jurisdiction . . . then, without reference to its other rulings, it was its duty to go no farther in the consideration of the case, and to dismiss it." *Wheeler v New York, N.H. & H.R. Co.*, 71 Conn. 270, 282, 41 A. 808 cited with approval in *Chrislonk v New York, N.H. & H.R. Co.*, 101 Conn. 356, 358, 125 A. 874.

28. That under Connecticut practice, compliance with C.G.S. 52-57 is mandatory and the failure to return the process to court within the time limited renders the attachment proceedings fatally defective. *Jepsen v Toni Co.*, 20 C.S. 287; *Daley v Police Commissioners*, 133 Conn. 716, 719; *Hartley v Vitiello*, 113 Conn. 74, 79; *Stafford v Morris Metal Products Co.*, 99 Conn. 372, 376; *Chevalier v*

Wakefield, 85 Conn. 374, 375; *Dillon v Fahey*, 88 Conn. 605, 607; *Gaylord v Payne*, 3 Conn. 258; *Lamothe v Gordon*, 15 C.S. 504; *Musial v State*, 3 C.S. 159, 160.

29. Judgment can only be entered *AFTER* jurisdiction of the parties is acquired in the manner prescribed by law and does not transcend, in the extent or character of its judgment, the law which is applicable to it. *O'Leary v Waterbury Title Co.*, 117 Conn. 39, 43, 166 A 673.

NO NOTICE – NO JURISDICTION – NO JUDGMENT

30. Where, the record shows that certain steps were taken to procure jurisdiction, and the law does not consider those steps sufficient, the judgment will be regarded as void for want of jurisdiction. Reference is had to a *Department of Transportation v Diamond* creation without any docket number on March 17, 1982 by Judge Dupont, A., and its abandonment in June 1982.

31. In violation of the Fifth and Fourteenth Amendments of the Constitution, the recording of the extrajudicial void judgment on the Land Records of the Town of East Granby, Connecticut is unconstitutional as it does not provide the property owners with a meaningful opportunity to be heard before they lose substantial rights and interests. *Armstrong v Manzo*, 380 U.S. 551.

32. The rendering of judgments prior to the return day are, ipso facto, null and void. *Brandiff v Sellas*, 40 C.S. 243, 245.

33. No principle is more universal than that the judgment of a court without jurisdiction is a nullity. *Clover v Urban*, 108 Conn. 13, 17, 142 A. 389; *Wood v*

Watkinson, 47 Conn. 500, 503; *Strong v Strong*, 8 Conn. 408, 412; I. Freeman, Judgments (5th Ed.) p. 668; 31 Am. Jur. 72 § 409. Such a judgment, whenever and wherever declared upon as a source of a right, may always be challenged. Restatement, Judgments, § 11 Comment c; see *Frick v Hartford Life Ins. Co.*, 98 Conn. 251, 255, 119 A 229. This does not offend the full faith and credit clause of the Federal Constitution. *Williams v North Carolina*, 325 U.S. 226, 229, 65 S.Ct. 1092, 89 L.Ed. 1577; see *Rice v Rice*, 134 Conn. 440, 445, 58 A2d 523; *Hooker v Hooker*, 130 Conn. 41, 47, 32 A2d 68. Nor does it violate the principles of comity. *Freund v Burns*, 131 Conn. 380, 385, 40 A2d 754.

"COURT TAKING"

34. At ISSUE is whether *"the court"* has the authority to seize property or declare a taking.

Under Sec. 305 of the Uniform Act (42 U.S.C. § 4655 (1971)) a state agency – "is the only agency that has eminent domain authority or standing – in acquiring real property – under which federal financial assistance will be available to pay all or part of the cost of any program or project."

Under Title I – General Provisions, as used in this Act, (P.L. 91-646 – #3) the term "state agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a state or of a political subdivision of a state, or any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states.

Ordinarily, the public agency on whom is conferred the power of eminent domain is the proper party plaintiff in a condemnation proceeding. If the statute providing for condemnation proceedings in particular instances designates the officials or boards to institute and conduct the proceedings, proceedings should be brought by, and in the name of, the officers or board so designated. 29 C.J.S., Eminent Domain, Sec. 235, p. 1201; *Town of Norwalk v Podmore*, 85 Conn. 498, 503, 83 A. 829.

The Legislature has the power to prescribe the persons or corporation who may institute condemnation proceedings, and to prescribe the conditions or circumstances under which such proceedings may be instituted. It follows that such proceedings may be instituted by those persons and corporations, and those only, on whom the requisite authority has been conferred by the Legislature. 29 C.J.S. Eminent Domain, Sec. 218, p. 1144. *City of Middletown v F.L. Caulkins Auto Co.*, 19 C.S. 45, 109 A2d 888.

Private counsel "Rogin-Hirtle," pretending they are "the court" acting as "the court," identifying themselves as "the court," usurping the power of "the court," have no standing, no authority, no right, no jurisdiction, no power, to act as an eminent domain agency to seize federal project real property.

35. Where the record is ultra clear that "DISMISSAL" of the "Rogin" law firm was made on December 23, 1977.

Where the record is ultra clear that plaintiff replaced the Rogin firm with Atty. Robert King of Vernon, CT on

January 4, 1978 and Atty. King was DENIED the right to represent plaintiff.

Where the record is ultra clear a *SECOND* notice to "take a hike" dismissal, was submitted to the Rogin firm on April 12, 1978 – with copies to referee Shapiro and A.A.G. Fred Neusner.

Where the record is ultra clear that the "ATTORNEYS" submitted a WITHDRAWAL from Simmons matters on April 19, 1978 – for failure to force plaintiff to submit deeds to the property.

Where the record is ultra clear that the "ATTORNEYS" sent the sheriff after plaintiff with a P.J.R. (prejudgment remedy) for counsel fees on April 20, 1978 – and – recorded same on the public land records at Vol. 59, page 419.

Where the record is ultra clear that the "ATTORNEYS" are encumbering the real property on June 2nd and 5th of 1978 with self-proclaimed judgments – *WITHOUT* any service or return to the court of competent jurisdiction (Superior Court) is an exercise in raw "POLICE POWER" that *CANNOT* convey real property to the State of Connecticut.

RELIEF REQUESTED

36. Plaintiff's prayers for relief are an order of the Superior Court that the filing of the unconstitutional, illegal, unlawful seizure on the Public Land Records of the Town of East Granby, Connecticut, at Vol. 59, p. 657-668; Vol. 59, p. 654-656; and Vol. 59, p. 623-626 are

NULL AND VOID, in addition to Map Book 17, pages 853, 854.

37. Plaintiff's further prayers for relief are an order that all actions taken by the law firm of *"Rogin-Hirtle,"* acting under the color and authority of plaintiff's private tort action, *Simmons v Wetherall – #163875,* be and are hereby declared – *NULL AND VOID.*

38. Plaintiff's further prayers for relief are an order that the $113,614.49 garnished from the "slush fund" by Attorneys *"Rogin-Hurtle"* [sic] without obtaining a judgment, without notice to several parties in interest, WITH PRIORITIES, who were retained as counsel on a contingency basis, be ordered to return said monies to the STATE TREASURY within thirty (30) days of such order, with statutory interest from October 27, 1980.

39. Whereas, the continued illegal, unlawful, unconstitutional encumberances [sic] have been and continue to be a deprivation of just compensation, and, a "satisfactory property interest" as defined in 14 CFR § 152.3 of federal regulations *CANNOT* be consummated as mandated by the grant agreement entered into between the United States of America and the State of Connecticut, plaintiff's prayer for relief requires "center stage" attention.

Respectfully submitted,

/s/ Augustus J. Simmons

Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION OF SERVICE

It is hereby certified that service of the *"MOTION TO DISMISS AND DISSOLVE"* IN *Simmons v Wetherall* – #163875 was mailed this 29th day of October, 1996, certified mail, return receipt requested to:

Edward S. Rogin, Sr., Esq.
Rogin, Nassau, Caplan, Lassman, and Hirtle
CityPlace
Hartford, CT 06106

Robert Hirtle, Jr. Esq.
Rogin, Nassau, Caplan, Lassman, and Hirtle
CityPlace
Hartford, CT 06106

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131-7546

Arnold K. Shimelman, A.A.G.
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX F

January 3, 1997

Hon. Marshall K. Berger, Jr.
95 Washington Street
Hartford, CT 06106

Re: *Simmons v Wetherall*, #163875

Dear Judge Berger,

Pursuant to the recommendation of your assistant that a letter be submitted to your attention that the Hon. Julia Aurigemma – *REFUSED* – to hear plaintiff's *"MOTION TO DISMISS, DISSOLVE, SET ASIDE REAL PROPERTY ATTACHMENTS UNDER DOCKET #163875"* at short calendar #7 (#19) on December 2, 1996, a copy of transcript is attached to that effect.

Under the due process and just compensation clauses of the Constitution, plaintiff is entitled to the rational administration of justice and this letter is in pursuit of the denial of such rational administration of justice.

The *Simmons v Wetherall*, #163875 file has become exceedingly voluminous, for several reasons, primarily because it is a 1970 "damages" action *AGAINST* the state that has never been addressed and the attempt to transform the private tort action into a substitute for federal regulations that the state (Department of Transportation) is obligated to proceed under pursuant to grant agreement 9-06-009-5708 (1955) and C.G.S. 13 b-50, sec. (d) for federal project real property acquisition.

Plaintiff, Augustus J. Simmons, delayed this letter of request until the holiday period of Christmas and New Years has passed, however, the urgency of acting on this

matter needs no further explanations or submissions beyond the contents of the motion.

The court's attention is called to the submissions to the clerk's office on December 2, 1996 of *DISSOLUTION OF ATTACHMENTS PURSUANT* to C.G.S. § 52-327 to be made a part of the #163875 file, in addition to a MOTION FOR LEAVE TO FILE A PETITION TO ANNUL ALL SANCTIONS ASSOCIATED WITH THREE (3) DECADES OF EMINENT DOMAIN MALFEASANCE, in federal court, submitted for the #163875 file on December 20, 1996, copies of which are in the possession of A.A.G. Arnold Shimelman and Otto Witt, Esq. whose appearance in this matter was put "IN QUESTION" by Shimelman shenanigans.

Plaintiff Simmons requests the presence of Atty. Otto Witt at all hearings, for continuity purposes, for damages that plaintiff is constitutionally entitled to (6 Nichols, eminent domain, section 26, 42 [1]; *Trumbull v Ehrsam*, 148 Conn. 47, 55-56; *Simmons v Wetherall* #163875), the most recent motion filed on April 18, 1996 for referral to three (3) referees and "REFILED" in June 1996, per recommendation of the Office for Appeals.

Without question just compensation must be applied to each and every lien-holder on the land records (C.G.S. § 48-21), *FIRST*, and the actions of the court has been and continues to impose cruel, unusual, extraordinary hardship, in total disregard of the provisions of the Uniform Real Property Acquisition Act (P.L. 91-646-(1971)), mandatory on all states no later than July 1, 1972.

In as much as Hon. Aurigemma, J., "passed the buck" on this matter to the presiding judge (Hon. Berger, M.), a

scheduling for a hearing and decision, as promptly as the schedule will permit, will be appreciated.

Yours truly,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

SUPERIOR COURT
STATE OF CONNECTICUT

CHAMBERS OF
JOHN L. LANGENBACH
ADMINISTRATIVE JUDGE

95 WASHINGTON STREET
HARTFORD, CONNECTICUT
06106

January 31, 1997

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Mr. Simmons:

Judge Berger referred your letter of January 3, 1997 to me.

In light of the previous rulings in this matter no further hearings will be scheduled as requested in your letter.

Very truly yours,

/s/ John J. Langenbach
John J. Langenbach
Administrative Judge

JJL/sb

APPENDIX G

AUGUSTUS G. SIMMONS *v.* HORACE B. WETHERALL, DEPUTY COMMISSIONER, DEPARTMENT OF TRANSPORTATION, ET AL.

COTTER, C.J., BOGDANSKI, PETERS, HEALEY and PARSKEY, Js.

Argued April 8 – decisions released May 13, 1980

Action to recover damages for the taking of certain parcels of land owned by the plaintiff, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and referred to *Hon. Louis Shapiro,* state referee, who rendered judgment on stipulation, and denied the plaintiff's motion to open the judgment, from which the plaintiff appealed to this court. *No error.*

The appellant filed a motion for reargument which was denied.

Ronald E. Cassidento, with whom, on the brief, was *Donald N. Carlow,* law student intern, for the appellant (plaintiff).

William A. McQueeney, assistant attorney general, with whom, on the brief, was *Carl R. Ajello,* attorney general, for the appellee (defendant state of Connecticut).

PER CURIAM. This appeal stems from various actions, consolidated by the trial referee,[1] involving the plaintiff,

---

[1] *Augustus J. Simmons v. Horace B. Wetherall, et al.,* No. 163875, was consolidated with the following cases: *State of Connecticut v. Augustus J. Simmons,* No. 202121; *Augustus J. Simmons v. Samuel Kanell, et al.,* No. 199230; *State of Connecticut v. Anastasia Simmons, Augustus J. Simmons* and *Charles Simmons,* No. 140965; and *Augustus J. Simmons v. Frank C. Parizek, et al.,* No. 162923.

the state of Connecticut and other litigants concerning the appropriation by the state of certain lands of the plaintiff located in the town of East Granby in the area of Bradley Field.

After extensive litigation over many years, the parties to all of the consolidated cases negotiated a settlement wherein the plaintiff agreed to sell the land to the state for an agreed upon price. After a stipulated judgment had been rendered which conformed to the terms of the agreement, the plaintiff moved to open the judgment claiming ineffective assistance of counsel. From the denial of that motion, the plaintiff took this appeal.

On appeal, the plaintiff argues that the court erred in refusing to grant the motion to open the judgment claiming (1) that the state failed to comply with the provisions of § 13b-44 of the General Statutes which require the approval of the town before land can be used for airport expansion, and (2) that there was ineffective representation of counsel resulting from a conflict of interest.

The trial referee's refusal to grant the plaintiff's motion was based on his conclusion that § 13b-44 of the General Statutes was not applicable to the five cases before him. The trial referee also concluded that there was no ineffective representation or conflict of interest on the part of the plaintiff's counsel.

The trial referee's conclusions are tested by the finding; *Brauer v. Freccia,* 159 Conn. 289, 293, 268 A.2d 645 (1970); and the conclusions must stand unless they are inconsistent with the facts found. *Craig v. Dunleavy,* 154 Conn. 100, 105, 221 A.2d 855 (1966).

The trial referee found that § 13b-44 was enacted in 1969, some five years after the disputes which underlie this appeal arose, and that it was not, therefore, applicable to the present controversy.

The trial referee further found that the plaintiff's complaints directed against his counsel were without merit; that there was no conflict of interest; and that counsel rendered the highest degree of service and devotion to the plaintiff in securing for him an excellent settlement. These unchallenged findings legally and logically support the conclusions reached.

There is no error.

APPENDIX H

TOWN CLERK'S CERTIFICATION OF RECORD COPIES (Sec. 7-23)

STATE OF CONNECTICUT	)	OFFICE OF THE TOWN CLERK
COUNTY OF HARTFORD	)	TOWN OF EAST GRANBY
	)	(Filed Dec. 2, 1996)

I, Laura B. LaFond, Assistant Town Clerk of the Town of East Granby, duly appointed and qualified according to law and having custody of the seal of the said Town, hereby certify that the annexed instrument is a true copy from the Land records of said Town, and that the original instrument from which said copy is taken is recorded on Page 657 Volume 59

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Town, this 28th day of November A.D., 1995.

/s/ Laura B. LaFond
Assistant Town Clerk

NO. 163875

AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
V.	:	HARTFORD COUNTY
HORACE B. WETHERELL, ET AL	:	JUNE 2, 1978

Present: Hon. Louis Shapiro, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons v. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons v. Frank C. Parizek et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a stipulation for judgment and judgment dated January 4, 1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligations in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$20,000
55/690	A	Jerome H. Diamond	Mod. of Mtg.	6/20/74	–
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97
57/426	ABC	Htfd. Nat'l Bank	Attach.	6/21/76	$2,625.00
58/95	C	Lenard Allaire, et al	Judg.	3/15/77	$11,104.00

58/221	C	Patsy Valente, et al	Attach	4/28/77	$3,000.00
58/301	A	Angelo Roncari	Lse.	5/24/77	–
59/253	C	Patsy Valente, et al	J/L	3/7/78	$2,490.00
59/263	C	Patsy Valente, et al	L/P	3/13/78	$3,000.00
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/283	Portion of Parcel A	Westside Vallet [sic] Parking Inc.	Lse.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of

$385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29/from the sum deposited.

4) That pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE, POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlen Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allaire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet [sic] Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne, Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allaire, Pasty Valente, Westside Vallet [sic] Parking, Inc., David B. Salzman, and Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or

interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be deprived.

PLAINTIFF,
COMMISSIONER OF TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney – 85340
AAG-Trans-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres, situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side – Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20° 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forty-Six One-Hundredths (860.46) feet to a point;

Thence S 29° 09' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22° 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Four One-Hundredths (81.24) feet to a point;

Thence S 09° 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut, One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20.

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road – Route #20 Scale 1" = 40' Karl F. Crawford Transportation Chief Engineer – Bureau of Highways January 1978", which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut, containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348

feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet, more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing Property of Dept. of Transportation of The State of Connecticut Rainbow Road – Route 20 Scale 1" = 40' January 1978 Karl F. Crawford Transportation Chief Engineer – Bureau of Highways Revised 2-24-78 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map,

One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) fee, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby – Map showing property of Augustus J. Simmons – Rainbow Road – Route 20 – Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons covenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with

the land and shall be effective so long as Bradley International Airport or its successor in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or manmade, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Right of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the "Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or

right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT)
) ss
Hartford County)

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing to be a true copy of record of the

Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

[SEAL]

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, at Hartford, in said County, this 5th day of June 1978

/s/ Thomas H. Abraham
CLERK.

Received June 5, 1978 at 4:01 P.M.
By /s/ Marilyn L. Barstow Asst. Town Clerk.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
ATTN: GEORGE LANGE III, CLERK MARCH 5, 1996
RE: *SIMMONS V BURNS* (95 CV 2198)

PLAINTIFF'S REPLY TO SANCTION
LETTER DATED FEBRUARY 22, 1996

1. Plaintiff, Augustus J. Simmons, submitted a reply, *with exhibits*, dated February 9, 1996 to the attention of Hon. Robert N. Chatigny addressing sanctions in addition to a copy to Clerk, U.S. District Court, Hartford, CT, with the expectation that the Clerk's Office would transmit such reply and exhibits with the Notice of Appeal that was filed in a timely fashion.

2. Plaintiff made it ultra clear in the last paragraph, (10), he does not intend to comply with a March 1, 1996 deadline in the District Court and for the obvious Constitutional deprivations, and *corrupt practices* associated with a (non-State Court purported Judgment) as further detailed in this Supplemental Memorandum, does not intend to comply within (15) days of letter dated February 22, 1996 from George Lange III, Clerk, U.S. Court of Appeals sanctions by the "Cabranes Court."

3. As a supplement to the lengthy paragraph 7 (Reply 2/9/96) Plaintiff adds an excerpt from Civil H-81-778 ("Cabranes Court") starting at page 25 wherein the Federal Aviation Administration, who have a *"POSSESSORY INTEREST"* in Plaintiff's Parcel "C", have not paid one (1) dollar for the servitude imposed upon the landowner; have not paid one (1) dollar to its agent,

Connecticut Department of Transportation, for the security fence enclosing Parcel "C", ordered erected by F.A.A. under threat of a $5,000.00 per day fine for nonperformance. The order should have been: *Pay the owner just compensation – FIRST*!!!

Starting at page 25:

> Mr. Simmons: So I say I'm here on the exact same issue. Follow the A.A.D.A. You haven't followed it out.
>
> Mr. Kelly (Asst. U.S. Atty.): Your Honor, I would comment only that the A.A.D.A., which I understand to be the Airport and Airway Development Act of 1970, that is codified at 49 U.S. Code, Section 1701 et seq., that the A.A.D.A. that Mr. Simmons refers to is a different statute than the one which I have briefed and that it, in fact, does not apply to the facts of this situation.
>
> There was no expenditure of federal funds under the A.A.D.A. to permit the taking of any of the property involved in this case, to my knowledge. Therefore, without seeing the case that Mr. Simmons relies on, I would just submit that the A.A.D.A. as a separate statute concerning airport development does not apply to this action.
>
> Mr. Simmons: Your Honor, I ask that the secretary give me an excerpt to that, because I'd like that statement that he just made – they have not participated in giving any money under the A.A.D.A. as far as Mr. Simmons is concerned. Am I quoting you fairly correct, counsel?
>
> Mr. Kelly: Your Honor, it is my understanding that the land that's in question here,

> the parcels of land on which there may be certain instrumentation landing system equipment was not obtained by funds provided by the F.A.A. under the A.A.D.A. That is my understanding of the situation.
>
> As far as the rest of Mr. Simmons comments in response to my Motion To Dismiss, I would simply stand on the memorandum as we filed it.
>
> The Court (Cabranes, J.): Fine, thank you very much. I will reserve decision on the Motion of the Federal Aviation Administration to dismiss this action.

4. There have been several "airport" cases around the country, but, the two more prominent that went to the United States Supreme Court were *United States v Causby,* 328 U.S. 256, involving low overflights rattling chickens in which the court ruled the government must pay the damages and *Griggs v Allegheny County,* 369 U.S. 84; 82 S. Ct. 53, involving noise and safety in which the court ruled the airport operator must pay damages.

In the case at bar, no damages, *NONE* have been paid by the government, by the airport operator, notwithstanding that the Docket *Simmons v Wetherall,* #163875, was a tort action with hearing dates (15) scheduled, but never complied with, consequently, the answer is before the court of why there is *NO* judgment before the court of competent jurisdiction, the Superior Courts of Connecticut.

5. Upon taking the oath as a District Court Judge, the Hon. Jose Cabranes was expected to uphold, honor, enforce federal laws as applicable to the case at bar.

The regulations promulgated pursuant to the Uniform Real Property Acquisition Act is "paramount federal law" applicable to the case at bar, and, applicable to all 50 states, *Connecticut included.* A statement of compensation, in writing, for real property acquisition for federal projects and/or federal-aid projects is mandatory under federal law (49 C.F.R. Part 24, Subpart B) and under state law (C.G.S. 8-129) to show that fair and just compensation be paid. Needless to say, this requirement for fair and just compensation, including damages, that requires appraisals before any statement of compensation can be submitted to the court, the owner, the Town Clerk, was never submitted to any court, yet, His Honor Judge Cabranes issues sanctions against this "zealous," "pertinacious" owner for challenging the "corrupt practices" of the "Rogin-Hirtle" law firm with a dismissal of them by Hon. Jose Cabranes.

6. One look, one glance at the "*CAPTION*" of the exhibit submitted to the District Court with reply of February 9, 1996 shows a *SIMMONS V WETHERALL*, #163875, land piracy that is unconstitutional and violative of every (federal and state) regulation imaginable, the Practice Book Procedures (F.R.C.P. and State) with the AMENDING, BENDING, CONTAMINATING, COMBINING, TRANSCENDING, TRANSFORMING, ADDING PARTIES TO A PRIVATE TORT ACTION, EXCLUDING THE OWNER, by private counsel "Rogin-Hirtle" *WITHOUT* filing any motions with the Clerk of the Court – to make sure that plaintiff-owner could not object in open court.

The rendering of a decision by the Connecticut Supreme Court under *Simmons v Wetherall*, 180 Conn. 587,

without any notice or service to the owner and necessary parties, without any "final" judgment – or – any other kinds of judgments by the Superior Court, without any proceedings whatsoever on the records of the Clerk of the Superior Court against *Simmons v Wetherall* #163875 is *NOT*, under any stretch of the law or imagination, a basis for SANCTIONS by the Federal Court (Cabranes, J.) or the State Court who attempted to play copy-cat (Judge Satter – A.A.G. Shimelman).

7. The Superior Court records show a *DENIAL* of compensation to private counsel (Rogin-Hirtle) on August 30, 1979 *BEFORE* the Supreme Court decision of May, 1980. Denial was based on the Clerk (Lucian Jachimovitz) calling attention to Hon. John Daly that – based on *Shelton v Wolthausen*, 80 C 599, the Superior Court had no authority to award compensation, for the reason there were *NO* proceedings before the court against which compensation can be paid.

The Superior Court records show a denial of compensation to lienholders Valente-Allaire, with exclusive liens on Parcel "C" (location of federal instrumentation) on July 7, 1982, *AFTER* the Supreme Court decision of May, 1980. Denial was based on the Atty. General's office (Feinhold, V.) challenge of lack of subject matter jurisdiction by the Superior Court. (Dupont, A. Judge).

The Superior Court records show a challenge by the owner, Augustus J. Simmons, of Superior Court Judge Aronson, A., on December 23, 1991 to "sua sponte," create jurisdiction within himself to summon all lienholders and clear the land records as mandated by 14 C.F.R. 152.3.

Lacking jurisdiction to proceed, Judge Aronson termed funds held by the court *ABANDONED*.

The Superior Court records show an attempt by the Superior Court to acquire jurisdiction of the case at bar with a *Dept. of Transportation v Diamond* creation, without a docket number on March 17, 1982, by Judge Dupont, A. and the subsequent abandonment of same in June, 1982.

8. Where "paramount federal law" prevails as in the case at bar and federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. *Bell v Hood*, 327 U.S. 678, 684, 66 S. Ct. 773, 777, 90 L. Ed. 939 (1946). The rendering of "Cabranes sanctions" to deny just compensation to plaintiff is an affront upon the United States Constitution – *specifically Art. V.*

9. The rendering of *Simmons v Wetherall*, 180 Conn. 587, by the Connecticut Supreme Court, referenced by the "Cabranes Court," is in DIRECT CONFLICT with the U.S. Supreme Court decision of *Standard Oil Co. v Missouri*, Vol. 32 at p. 409 that states: "If the action be for libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will . . . the judgments mentioned, given in the cases supposed, would not be merely erroneous, they would be absolutely void, because the court, in rendering them, would transcend the limits of its authority in those cases." (citations omitted)

10. Where the charge of *IMPROPRIETY, UNREASONABLENESS, CONDUCT EVINCING IMPROPER*

MOTIVES, BAD FAITH, CLEAR ABUSE OF POWER, PLAIN DISREGARD OF DUTY, THE AURA OF DIVIDED LOYALTY entered into plaintiff's tort action (*Simmons v Wetherall #163875*) and this was put on the doorstep of Hon. Judge Cabranes in Affidavit form on February 4, 1982 at 9:35 a.m. – and was dismissed via a summary judgment proceeding, it has been held that the appropriation of the property will be restrained if it be found that such was the character of the decision. *Water Commissioners v Johnson*, 86 Conn. 151, 159, 84 A 727.

11. To particularize in more detail the actual intent of purpose to defraud plaintiff started with plaintiff having to renegotiate a "contingency contract" from the customary 1/3 to 38% of damages due to "Salzman" having moved out of state was – mere window dressing. It was never the intent of "Rogin-Hirtle" to pursue damages and the 15 days scheduled back on April 5, 1977 for December 1977 and January 1978 were – put under the table.

The "got a settlement offer" phone call to plaintiff on December 8, 1977 by the "Rogin-Hirtle" law firm, without mandatory appraisals, without mandatory statements of compensation in writing, was in retrospect – a phoney-baloney slush fund to self-serve Attorneys Rogin-Hirtle, and, a flagrant, intentional violation of federal law 49 C.F.R. Part 24 – in direct violation of state law.

The "got a settlement offer" was used as a deceptive, devious, fraudulent tool to have plaintiff stipulate to withdraw two (2) federal court actions, Docket Numbers H-74-148 and #14806 that was remanded by the Second Circuit (472 F2d 509).

Said stipulations were drafted on December 12, 1977 prior to filing an appearance on December 13, 1977 and had to be signed, *prior to – before* any offer would be divulged.

After plaintiff served a Dismissal, in writing, upon the Rogin-Hirtle law firm on December 23, 1977 for conduct that paragraph #10 describes only the tip of the iceberg, members of the firm tromped into federal court and withdrew the actions – knowing full well plaintiff was "backroomed" and would not deprive himself of federally protected rights.

12. On December 13, 1977 on a prearranged basis Atty. Rogin, Sr., in concert with Parskey, L. of the Supreme Court and Cohen, S. of the Superior Court "combine" cases on a sua sponte, fly-through, on-the-spot basis without filing any Motions with the Court as required by the Practice Book. The exercise of bypassing Practice Book procedures had a two-fold devious, malicious, and unethical purpose. First was to not permit plaintiff any opportunity to object in open court to the scheme, and, second, *Simmons v Parizek*, Docket # 162923, had already gone to Judgment on January 11, 1977 and any Motion filed with the Clerk of the Court to open a Judgment would require a filing fee, and, the Judgment being almost a year old, the Superior Court would not, could not combine a case that had already gone to Judgment. Judgment consisting of 30 trial days over a one year period was for rental of Parcel "C" for the years 1964-1969, plus an appraiser's fee and an award to the engineer. Docket # 199230 was intended to start with 1970 and continue until an adequate property interest was accomplished. The pattern and intent was *DEVIOUS*

indeed. Don't pay that critter anything for the years that the F.A.A. was maintaining a possessory interest. (Skin him alive – while he is still breathing.)

13. Plaintiff was told to report to Referee Shapiro on January 4, 1978 and did so with new counsel, Atty. Robert King of Vernon, Connecticut, who had some "Nuremburg Trial" experience, having told the Rogin-Hirtle law firm to take a L-O-N-G walk on a short pier on 12/23/77.

NO way was plaintiff going to be allowed to proceed with counsel of his choice and another fraudulent proposal (same technique – no appraisals – no statements of compensation – backdating) from the discharged attorneys was again going to be force-fed upon plaintiff. At this juncture in time one matter was for certain. That certainly, with the aura of divided loyalty and conduct evincing improper motives was that plaintiff *WOULD NOT* tender any deeds to Rogin-Hirtle, come hell or high water. Initiate another condemnation.

14. The *INTENT* in the case at bar was to acquire real property for a federal project as related in transcript page 4, (12/13/77):

The Court: All right. Is there anything else then that any other counsel want to add?

Mr. Hirtle: Well there is – If your Honor will see fit to enter judgment, we have agreed with the state that we will provide on Parcel A, which is recited in the stipulation, a warranty deed together with a title certificate and with the exception of a lease to the Roncari Company; and we will provide on Parcel C and a small one acre

parcel a quick claim deed; and if the court enters judgment, the state will proceed to obtain the check and then we will have a closing when that money is available for the closing.

The cart before the horse – ass-end-to.

The practice and procedure is (C.G.S. 8-129) performance *first* and then judgment. – *Not* judgment first and then we intend to perform *later* as expounded by Atty. Hirtle above.

And when plaintiff refused their "slush-fund" money and refused to tender any deeds the impostors and impersonators (Attys. Rogin-Hirtle) "told the world" by putting on the Land Records of the Town of East Granby, Connecticut at Vol. 59, p. 658 that: "The Court finds that Augustus J. Simmons has refused to perform."

C.G.S. 8-129 reads very clearly that *AFTER* a statement of compensation and deposit with the Clerk of the Superior Court and has caused a Certificate of Taking to be recorded in the office of the Town Clerk, any Judge of such Court may, upon application and proof, put the agency into peaceable possession of the property.

15. The courts have an inherent and statutory authority to regulate the conduct of attorneys who are officers of the court. "A dual trust is imposed on attorneys at law. They must act with fidelity both to the courts and to their clients, they are bound by canons of ethics which are enforced by the courts . . . it demands on the part of the attorney undivided allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute

integrity and utter renunciation of every personal advantage conflicting in any way directly or indirectly with the interests of his client." *State Bar Assn. v Conn. Bank & Trust Co.*, 145 Conn. 222, 234, 140 A2d 863. Further, attorneys in Connecticut have interwoven dual functions as members of the bar and as Commissioners of the Superior Court, and "are charged with using these powers and acting by the authority of the State in the interests of justice." *In re Application of Griffiths*, 162 Conn. 249, 256, 249 A2d 281.

Where there was a "final draft" of a master plan for Bradley International Airport by PURCELL-DELEUW-CATHER, engineers, architects, and planners of New York, NY, submitted to Connecticut Department of Transportation and the four (4) abutting towns surrounding the airport in *MARCH, 1977*, and it was reported at page 29 that: "It is clear that the present land area of the airport is well in excess of the present and future land requirements. Thus it is projected that the future land requirements of the airport would not need any right of way acquisition and expansion. (*Plaintiff's Parcel "A" was not necessary.*) In August, 1977, Assistant Attorney General R. Pelgrift stated in negotiations "*No need for Parcel A.*"

The lease on the Land Records to Roncari was justified and the actions of "Rogin-Hirtle" to *nullify* the lease was a gross and crass abuse of power. The contamination of the Land Records with covenants was unwarranted, unjustified, uncalled for and uncompensated.

On page 43 of the PURCELL-DELEUW-CATHER "final draft" reference was had to the "clear zones" as

follows: "At Bradley, major portions of the land under the clear zones are within the airport boundaries and therefore are under the control of the State of Connecticut. There are exceptions on some of the runways. The clear zone for Runway 6 was considered as being within the airport boundaries. However in January, 1977, the Connecticut Supreme Court ruled that approximately 6 acres within the clear zone is still the property of Mr. Augustus Simmons. (*Plaintiff's Parcel "C" is necessary.*)

Attorneys Rogin-Hirtle had *NO* authority, statutory or otherwise, as private attorneys to, sua sponte, open up and set aside a Superior Court Judgment (Docket #162923) and the *BACKDATING* to November 12, 1964, in the face of the history of this airport case, pursued after submitting a withdrawal from the case on April 19, 1978, putting encumbrance on the Land Records at Vol. 59, p. 419 of East Granby, Connecticut Land Records on April 20, 1978 for attorney fees that were originally agreed to on a contingency basis for *"DAMAGES,"* encumbering the property with "Supplemental Judgments" on June 2 and 5 with court stamps on decrees that never reached the courthouse via notice to necessary parties or return of service to the court is as flagrant as violations can possible [sic] be made AND, – THEN – *SANCTIONS* by Hon. Jose Cabranes against plaintiff for his "pertinacious" pursuit for the basic, fundamental JUST COMPENSATION, including damages and interest.

16. Plaintiff has instituted a *MOTION FOR IMPEACHMENT,* Docket No. *Simmons v Wetherall* #163875, in the Connecticut Superior Court on August 1,

1995 that is presently in the "court process" for resolution. The allegations in this memorandum are true, factual, irrefutable and a copy will be submitted to the Clerk, Superior Court at Hartford, Connecticut, to be made a part of the file of *Simmons v Wetherall* #163875, a *1970* damage action where plaintiff cannot obtain damages in the State Court. See *Scherban v Kannell* Civil No. N-75-215 (1976) Newman, J. Judge; also *Textron, Inc. v Wood*, 167 Conn. 334, 342 (1974); *Trumbull v Ehrsam*, 148 Conn. 47, 55-56 (1961); *Anselmo v Cox*, 135 Conn. 78, 81-82 (1948).

17. Plaintiff, having due respect for this Court, does *NOT* intend to pay, to comply with any time period to pay sanctions (fines) to be distributed – to the *GOVERNMENT* and – to the *STATE*.

Plaintiff maintains the Federal District Court is required to act on plaintiff's civil action (95 CV 2198) (RNC) under the provisions and purposes upon which the District Courts of the United States were established.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff hereby certifies that a copy of Reply to Sanction Letter dated February 22, 1996 has been sent first class, postage prepaid this 5th day of March, 1996 to:

Arnold K. Shimelman, Asst. Atty. Gen.
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P. O. Box 317546
Newington, CT 06131-7546

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Clerk, U.S. District Court
450 Main Street
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/s/ Augustus J. Simmons
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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At the stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the seventeenth day of April one thousand nine hundred and ninety-six,

Augustus J. Simmons, Plaintiff-Appellant, v. J. William Burns, Defendant-Appellee.	96-7336 (Filed Apr. 17, 1996)

This Court having determined *sua sponte* that appellant Simmons has not complied with the sanctions previously imposed by this Court, it is ordered that said appeal be and it hereby is dismissed without prejudice to reinstatement upon presentation of adequate proof of compliance with the sanctions imposed in *Simmons v. Frankel*, No. 92-6208, and *Simmons v. Hinson*, No. 94-6154, and it is further ordered that the Clerk of the Court accept no further papers from Simmons on any civil matter until he provides this Court with such proof. *See Schiff v. Simon & Shuster, Inc.*, 766 F.2d 61 (2d Cir. 1985); *Zerman v. Jacobs*, 814 F.2d 107, 109 (2d Cir. 1987).

/s/ Roger J. Illegible
/s/ John McIllegible
/s/ George Faugette /s/ Illegible
Circuit Judges

RUM JMcL PNL
APR 17 1996

ISSUED AS MANDATE
April 17, 1996

Proceedings include all events.
96-7336 Simmons v. Transportation

2/14/96	Note: This appeal was PRO SE when filed. (pr24)
2/14/96	Copy of district court docket entries and notice of appeal on behalf of Appellant Augustus J. Simmons filed. [96-7336] (pr24)
2/14/96	Appellant Augustus J. Simmons Form C RECEIVED. [96-7336] (pr24)
2/14/96	Appellant Augustus J. Simmons Form D RECEIVED. [96-7336] (pr24)
2/14/96	Copy of district court Judgment dated 1/29/96, filed. (pr24)
2/14/96	NOTE: See Cases: 92-6208 & 94-6156. (pr24)
2/14/96	Letter sent to Appellant Augustus J. Simmons: dated 2/22/96 advising that he must porvide [sic] our Court with written proof that he has complied with two previously issued Orders by our Court (in 92-6208 & 94-6156). (pr24)
3/5/96	Letter ed 3/5/96 by appelalnt [sic] Simmons in response to our letter of 2/22/96. (pr 24)
4/9/96	Scheduling order #1 filed. Record on appeal due on 4/19/96. Appellant's brief and appendix due on 5/9/96. Appellee's brief due on 6/10/96. Argument as early as week of 7/1/96. (pr28)

Docket as of April 9, 1996 3:49 pm